1944. File No. S. Dwr. 1/44

Examined
Book
41/156

Legal DEPARTMENT
A. BRANCH

Subject:—

C. S. No. 36 of 1943.

Surajsingh B. Suraj - Plff.
V/S.
The Govt. of Bombay - - Deft.

Claim. Rs – 2,330.

Civil Appeal No. 64 of 1945.

P 98 (E, K.)

File No. S. Dwr. 1/44

Bd. Scott. Slip 24-B

CONTENTS

Legal Department File No. S. Dharwar 1 of 1944.

Sr. No.	Subject	Page
1) R 1) G. R. L. D.9202-A dated15th Dec. 1943.	Suit - Dharwar - Cl. No. 136 of 1943j Surajsingh B. Suraj v/s Govt. of Bom. sactioning defence of suit with brief suit for damage for cancellation	25
2) G. R. L. D. 1677 dated 22nd March 1945	Recording the result of suit	63
3) G. R. L. D. 4893 dated 30th June 1945	sanctining the defence of C.S. No. 64 of 1945 in the suit 66 of 1943	75
4) G. R. L. D. 4746 dated 2nd july 1946	Recording the result of	103

Letter.

No. 403 R
Dharwar 27 July 1943.

To

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Dharwar L.C.Suit No.36 of 1943.

Sir,

I have the honour to submit herewith chronological statement of facts, grounds of defence and draft written statement in duplicate in accordance with Rule 118 of the Law Officers Rules, in respect of the above suit with a request to sanction the defence of the suit at an early date. The papers of this case in one file have been submitted herewith for favour of perusal.

1. The suit is numbered as Long Cause Civil Suit No.36 of 1943.

2. The suit has been filed in the court of the First Class Sub-Judge, Dharwar.

3. Names of the parties:- Surjansingh B.Suraj, Sikh, aged 40, Electrical contractor and supervisor, Hubli.
Vs. ..... Plff.
The Government of Bombay.

28 1943 4. Valuation of the suit:- Rs.2335/-

5. Notice of suit under Section 80 of the C.P.C. has been given to the Secretary, Government of Bombay, (P.W.D.).

6. The suit has been fixed for putting in written statement in the

Court of the F.C.Sub-Judge, Dharwar, on 25-8-1943.

7. The suit has been filed by the plff on 11-1-1943

It is submitted, therefore, that the Government may be pleased to ~~xxx~~ accord sanction for the defence of the suit with such additionn and alterations as may be deemed fit and proper at an early date.

Your obedient servant,

S R Mulgund

District Government Pleader.

Respectfully submitted through the Collector of Dharwar for favour of necessary action.

S R Mulgund

District Government Pleader.

SECRETARY TO GOVT.
LEGAL DEPARTMENT
File No.
Sub No. 7929
Received
No. L.A.S. 610.
Dharwar 29-7-43

Forwarded with compliments to the Remembrancer of Legal Affairs, Bombay, for necessary action.

District Magistrate,
Dharwar.

L.C.Suit No.36 of 194[illegible]

In the Court of the First Class Sub-Judge, at Dharwar.

Plff:-Surajsingh B.Suraj of Hubli.

Vs.

Deft:- The Government of Bombay.

Chronological statement of facts.

1. The suit is for obtaining a decree for the recovery of
P.3-5 file a sum of Rs.2335/- from the defendent as past damages as well as future damages with the costs of the suit, after declaring that the order dated 17th April 1942 passed by the Licensing Board (Electrical Department) P.W.D.Offices, Bombay, as per their No.Ex.17/199 which
P.78 file cancelled the contractor's license No.Hub.C.7 granted to the plaintiff and suspended the supervisor's permit No.B.S.426 for a period of one year from the date of its order, is illegal, void and inoperative.

2. It appears that the plaintiff was an electric contractor holding a certificate of competency, a
P.3 (copy of plaint). contractor's license and the supervisor's permit. Since about the year 1932, plff had been carrying electric installation work since then, and had his business at Belgaum, Dharwar and Hubli. The contractor's license having been originally granted to him as per rules and conditions relating thereto, it was being renewed from year to year afresh.

3. It appears that one Mr.Bhat informed the Electrical Sub-Inspector, Belgaum, on 14-5-1941 (of
P.47. Modern Industrial Works) that an ~~x~~ unauthorised - electrical installation work was being carried on at the New Anjuman Building, Dharwar, and that this work was in contravention of rule 48 of the Indian Electric--ity Rules, framed by the Government of India in 1937.

4. The matter appears to have been investigated into by the Electrical Sub-Inspector, Belgaum, and during the course of the investigation it was found that the

installation work in the Anjuman building was being carried out by a wireman named Mr.M.L.Pilley, holding a wireman's permit - issued by the Licensing Board. Mr.Pilley, when questioned, inform--ed the Electrical Sub-Inspector, that he was in the employ of - Mr.Surajsingh B.Suraj (plff) and that the work was actually - carried out on his behalf. This statement was not accepted the Electric Sub-Inspector. From the inquiries made with the plff Surajsingh, it was learnt that the wireman, Pilley was discharged from plff's service on 30-9-1939 (i.e. long prior to the work in Anjuman building) and was shown to be so discharged ~~from plff's service on 30-9-1939 (i.e. long prior to the work in~~ in the wireman's register maintained by the plaintiff. Mr.Pilley in reply stated that he was never informed by the plaintiff that he had been discharged, and that he ~~had~~ (Mr.Pilley) had been always carrying out works in Dharwar on behalf of and under the instructions of Surajsingh B.Suraj (plff) who had actually written to him on ~~24x3xx~~ 23-4-1939, a letter acknowledging receipt of money and also confirming the mutual arrangement viz. that the Assistant in his (plff's) shop would give the test reports for works carried out by Mr.Pilley at Dharwar during the absence of the plff from Hubli as agreed upon. Further Mr.Pilley had carried out several works at Dharwar according to the above-said arrangement and had actually received test reports from the plff ~~from obtaining~~ for obtaining connections to these installations. It was also found that several ~~licensees~~ consumers whose installations had been carried out by wireman Pilley and certified by plff had admitted that the electric installations work on their premises had been entrusted ~~entered~~/by them to wireman Pilley, whom they believed to be a representative of a licenased contractor and that the entire work of installation was actually carried out by the wireman Pilley independently without the direct supervision of any other person.

5. On the 4th July 1941, the Assistant Electric Inspector ~~Inspector~~ Poona, wrote to the Electric Inspector, Bombay, stating that wireman Pilley undertook wiring work illegally, and though he was not a bona fide employee of plff's company ~~x~~ he (Pilley) managed to get the test reports, after executing the works without the direct supervision of Class I competency certificate-holder

7-5

signed by the plff. The Assistant Electrical Inspector, therefore, recommended that Wireman Pilley and his apperentic B.S.Bajpe might be prosecuted for malpractice.

On the printed forms bearing the name of plff's company.

6. On 15th July 1941 the Electric Inspector, Bombay Province wrote in reply to the above mentioned letter of the Assistant Electric Inspector, Poona, observing that there wer items which seemed to implicate Singh Eletric Works in genera malpractice. Vix (A) Singh Electric Works were at Hubli (B) Pilley and his apprentice were shown on the register of wire-man for a period and were working at Dharwar (c) the wiremen were in possession of printed forms of Singh Electric Works. The license of Singh Electric Works was in the name of - Surjansingh B.Suraj i.e. plff. The Electric Inspector, Bombay asked the Assistant Inspector, Poona, to ascertain as to why the licensed contractor (plff) worked under two different names &(2) whether he informed the two wireman of their discharge from his employ (3) investigate whether one or two official registers of wiremen were mentioned and if only one register was maintained, whether these two wiremen were ever in Hubli.

P.62.

P.63.

7. It appears that the above mentioned letter of the Electric Inspector, Bombay, was forwarded on 18-7-1941 by the latter to the Electric Sub-Inspector, Belgaum, for investigation. On 2nd August 1941 the Electric Sub-Inspector, Belgaum, wrote in reply as under:-

(A) The Singh Electric Works, Hubli, have carried out works at Dharwar more than six months prior to this case of Malpractice in Anjuman buildings which would be seen from the weekly connection reports of Dharwar Electric Co. and that almost all the works prior to 18-11-1940 were carried out by the wireman Pilley and Bajpe. The Electric S.I. furthe reported that the Singh Works at Hubli, both the wiremen were shown on the register for a period and were working at - Dharwar; that the two wiremen were in possession of printed order forms of Singh Electric Works, and that the mode of obtaining the test forms duly signed by the Singh (plff) in his absence from Dharwar & Hubli for the works carried out by these two wiremen would be made more clear from a letter

written by Mr.Singh (plff) to Pilley. The Electric S.I. Belgaum, also reported that though the contractor's license was issued in the name of Surajsingh B. Suraj, Hubli, the order forms were - printed as Singh Electric Works, Hubli; that the sign-board at Hubli was also painted as above, and that the test reports for all the works carried by Pilley and Bajpe were assigned by S.B. Suraj (plff).

8. On 8th August 1941, the Assistant Electric Inspector, Poona, forwarded the above mentioned report of the Electric S.I. Belgaum, to the Electric Inspector, Bombay, observing that the correspondence showed that the works carried out through Mr.Surajsingh B.Suraj at Dharwar, were not executed directly under the supervision of the Class I competency certificate-holder, and that the plff Singh himself appeared to be the instrumental in the malpractice committed by the wireman, as he (plff) did not inform the wiremen of their discharge from his services and allowed them to misuse the signed test reports in his absence. Reverse of P.63.

9. It may be mentioned here that on 23-4-1939, plff appears to have written a letter mentioned in para 4 & 8 above, as follows:- P.50 & 52.
"The Singh presents compliments to Mr.Pilley. Received the money sent by you. I will go to my native place within 4 or 8 days. Before going, I will instruct a boy Assistant here. In case you do any work, this boy will give you the test reports. I will send the receipts to you for the money sent by you. You may give it to him".

P.S. "Convey my best respects to your elder brother. If you want the test report you may come to our place of work and take it.

10. On 23rd August 1941, the Electric Inspector, Bombay, wrote to the Assistant Electric Inspector, Poona, to submit a true copy of the register of wiremen maintained by the licensed Electric contractor Surajsingh B.Suraj, alias Singh Electric Works, Hubli. On 1st September 1941, the Electric S.I. wrote to the El. Inspector, Poona, supplying the latter with a copy of the register of wiremen maintained by plff's Co. On 2nd September 1941, the Asst. Inspector, Poona, forwarded to the Inspector, Bombay. The Register shows that Pilley and Bajpe were discharged from plff's services on 30-9-1939 and 16-1-1941 respectively. P.64 P.66

11. On 15th September 1941 the Electric S.Inspector, Bombay,

4-7

P.68 asked the Assistant Electrical Inspector, Poona, to obtain the original letter dated 23-4-1939 written by plaintiff to Mr.Pille (referred to in para 9 above). On 22-9-1941, the Assistant E.I. Poona, forwarded to the Inspector (1) the original letter dated

P.69 23-4-1939 (2) a list of consumers signing against their names and showing that the works in their premises were carried out by the said Messrs. Pille Pilley and Bajpe on behalf of Messrs. Singh Electric Works Hubli. On 23rd September 1941, the Assistant E.I. Poona, forwarded all the above documents to the Electrical

P.50,51,52 & 67. Inspector, Bombay.

12. On the 4th October 1941, the Electrical Insp Inspector Bombay, being of opinion that plaintiff had been guilty of -

P.70 malpractice, forwarded all the papers to the Secretary, Licensing Board, Bombay, with a request that disciplinary action might be taken against the (plff), the supervisor and proprietor of Messrs Singh Electric Works for breach of rules under rule 48 of the Indian Electricity Act Rules, 1937.

13. On 12th December 1941, the Secretary, Licensing Board,

P.74-75. Bombay, circulated the correspondence relating to the case of malpractice by plff among the members of the Board for recording their opinion, as regards the action to be taken against plff for certifying works which were not carried out under his supervision in contravention of rule 48 of the E.I.Rules, as could be seen from his own letter dated 23-4-1939.

14. The two members of the Licensing Board Messrs.(1) Mulleneax (2) Alfrey recorded in writing on 23-12-1941 and - 9-1-1942 respectively, their opinion to the effect that the - license of Messrs. Singh and Co. (plff) should be cancelled as plaintiff was not fit to hold it.

15. On the 17th April 1942 the case was kept before the Board, which considered plff as unworthy of holding contractor's

P.78 license on account of his malpractice and the Board cancelled the contractor's license No.Hub. C.7 granted to plff and suspended the supervisor's permit No.B.S.426 held by the plff for a period of one year from the date of cancellation, in pursuance of the above decision. On the same date, the Secretary, Licensing Board, wrote to plff who was communicated with the order passed by the Board, and was asked to surrender the contractor's licens[illegible]

he supervisor's permit to the office of the Licensing Board at Bombay.

16. On 23rd April 1942, the Electric Inspector, Bombay, wrote to the Assistant Electric Inspector, Poona, to arrange to prosecute Messrs. Pilley and Bajpe, the wiremen, for breach of rule 48 of the I.E.Rules. P.79.

17. On 25th April 1942, the Assistant Electric Inspector, Poona, requested the District Magistrate, Dharwar, to ask the Public Prosecutor, Dharwar, to launch a prosecution against the two wiremen under Rule 123 of the I.E.Rules, 1937, for breach of Rule 48 of the said Rules. On 27-4-1942, a complaint was lodged against the two wiremen and on 9-1-1943, both the accused (wiremen) having admitted their offence were sentenced by the Sub-Divisional Magistrate, F.C.IV Dn. Dharwar, to pay a fine of Rs.15/- each or in default to suffer one month's simple imprisonment. P.81. P.83,84,85

18. On 20th April 1942, plff wrote to the Secretary, Licensing Board, in reply to the order of cancellation of the license dated 17th April 1942, that he had not been heard and if opportunity was given to him, he would explain the matter. P.12.

19. On 23rd April 1942, the Secretary Licensing Board informed plff that there was sufficient evidence to show that plff had furnished test reports to wiremen Pilley for several works undertaken and carried out by him without plff's direct supervision.

20. On 25th April 1942, the Electric Engineer to Government wrote to the Government in the Public Works Department as follows:- P.15
"On investigating a case of malpractice at Dharwar, it was found that one Surjansingh B.Suraj, licensed Electric contractor and also a competency certificate holder, had permitted wireman by name Mr.Pilley to carry out wiring works on his behalf without his direct supervision, in contravention of rule 48 of the Indian Electricity Rules, 1937, and that he had even furnished test reports for such works without carrying out the test works himself". "The matter was placed before the licensing Board and it was decided to cancel his contractor's license and suspend his supervisor's permit for one year". "Mr.Singh may be informed as proposed in the Secretariat note".

21. On 25th April 1942 plff sent a telegram to the Secretary Licensing Board as follows:- "Advise Hubli, Dharwar Electricity P.16-

companies to accept my test reports for works completed before ~~the~~ license suspended "

22. On the same date, the Secretary, Licensing Board in reply asked plff to furnish a list of all electric installation works completed before the license was cancelle and duly reported to the Electric Inspector and the Assistan Inspector.

P.17.

23. On 24th April 1942 plff sent to the Secretary, Licensing Board a list of works illegally carried by the licensed wiremen and on 28th April 1942, plff sent a list of works undertaken by him before the license was cancelled and his letters dated 24th, 26th and 28th April 1942. Plff complained that the action of the Board was arbitrary.

P.78- 19

P.22.

24. On 30th April 1942, the Secretary Licensing Board wrote in reply to the above mentioned plff's letter of complaint, denying the allegations made by plff regarding the arbitrary decision and stated that the decision of the Board was final.

P.23 & 32

25. It appears that on 23-4-1942 plff sent a telegram to the Government of Bombay, P.W.Dept, by way of an appeal against the decision of the Licensing Board.

26. On 29th April 1942, the Government of Bombay, P.W.Dept. ordered the plff as per their No.S.92/10261-E directing ~~him~~ the plff to be informed that the decision of the Licensing Board was final and Government was not prepared to interfere in the matter. On the 1st May 1942, in Inward No.713, the Electric Engineer to Government was communicated with the above Government order.

27. On 5th May 1942, the Assistant Electric Engineer Poona, wrote to the Electricity Companies, Dharwar, Hubli and Ranebennur that connections to some 4 installatio works carried out by plff might be given on receipt of test certificates.

P.26.

28. On 18th June 1942, plff gave notice of suit under section 80 C.P.C. to the Secretary to the Government

of Bombay, P.W.Dppt. P.8-9

29. It appears that on the same date plff gave a similar notice of suit to the Collector who acknowledged the receipt of it on 19th June 1942. P.7.

30. It appears that on 1st July 1942, the Government (P.W.D.) called from the Electric Engineer to Government, for remarks. On 10th July 1942, the Electric Engineer to Government, stating the facts of the case, observed that the licensing Board took action against the plff under Rule 35-A of the rules and conditions for grant of certificate of competency and permits to supervisors and wiremen and sanctioned by the Government of Bombay in their notification No.P.W.D.620/36-I dated 28th August 1941. P.47

31. In October 1942 plff surther complained to the President Licensing Board of the illegality of the order of the Board. But plff was replied that his case had been carefully considered by the Board which was unanimous. P.53-56.

32. On 18th November 1942 plff filed the present suit in the F.C.Sub-Judge's court, Dharwar, for a decree against the Government of Bombay, for recovery of Rs.2335, as part damages, and for future damages and costs stated in para 1 above. P.3-5.

33. On 30th November 1942, Mr.Koppikar, pleader for plff requested the President, Licensing Board, to let him know if the Board would reconsider the plff's case. On 17th December 1942, the President, Licensing Board, informed the pleader for the plff that the reconsideration of the plff's case would be postponed till the completion of the result of the prosecution launched against the wireman Pilley for breach of Rule 48 of the Indian Electricity Rules. P.57. P.59.

GROUNDS OF DEFENCE.

Jurisdiction:- It may be contended that the jurisdiction of the civil court is barred to try the suit, as the orders of the licensing Board, holding that the plff is guilty of malpractice and cancelling the contractor's license and superceding the supervisor's permit, are final, under rule of the Indian Electricity Rules, 1937. One of the important functions of the Board under the rules framed by the Government of Bombay for issuing certificates

of competency and licenses, is to hear and decide cases of malpractices by electrical contractors, supervisors and wiremen Under the said Rules, any decision given by the Board in the execution of its functions shall be final. It may also be urged that the suit is barred under the provisions of section 56 of the said Act. It may also be urged that the words "Public Officer" includes Government.

2. Cause of action :-

Assuming, but not admitting, that the Board passed a wrong order, this deft would not be held liable for it. The Board passed the order under the powers given to it by the rules under the Statute. The orders passed by the Board in exercise of their administrative powers should be deemed to be correct and proper. But there is no cause of action as against Government

3. On merits:-

The plff contends that the order dated 17th April 1942 of the Licensing Board, cancelling the contractor's license, and the supervisor's permit held by the plff, is illegal, void and inoperative on the following grounds:-

1. The plff does not admit the finding of the Board that he allowed Mr.Pilley, wireman, to carry out wiring works on behalf of plff without plff's direct supervision. He also does not admit the finding of the Board that he furnished teat reports for Mr.Pilley's works without carrying on the testing himself. In other words, plff does not admit the allegations of malpractice made against him.

2. The plff was not apprised by the Board of any charge of malpractice or misconduct. The Board gave him no notice of any charge.

3. Plff not given any opportunity of being heard in defence.

4. The order of the Board was not passed in any legally constituted and legitimate meeting. The proceedings of the Board are, therefore, illegal.

5. The rules of natural justice have not been observed by the Board.

As regards point No.i, it may be urged that on 14-5-1941 Mr,Bhatt informed the Electrical Sub-Inspector at Belgaum that an unauthorised electrical work was being carried out at the Anjuman Islam Building at Dharwar, in contravention of of rule 48 of the Indian Electricity Rules, 1937 by one Mr.Pilley, wireman, holding a wireman's permit (P.W.No.606). Though he was shown in the register of wiremen, kept by the plff, it is alleged that he was discharged on 30-9-1939 from plff's service. But Mr.Pilley represented that he was carrying on the works at Anjuman Buildings on behalf of plff & under instructions from him. On 23-4-1939 plff wrote a letter to Mr.Pilley acknowledging receipt of the money sent by Mr.Pilley to plff and confirming the mutual arrangement that the Assistant in the plff's shop would furnish test reports signed by the plff for works carried out by him (pilley) at Dharwar, during the absence of plff from Hubli. Further, the statement of some consumers at page 51 of the correspondence shows that the installation work was carried out by Mr,Pilley, wireman, on behalf of plff as the licensed contractor, during the year 1940-41 (P.42-45) obviously after he (Pilley) was shown to have been discharged from the plff's services. As a matter of fact, both Mr,Pilley and Bajpe were prosecuted each was sentenced to pay a fine of Rs.15/- or in default to undergo simple imprisonment by the F.C.Magistrate, Dharwar City, on 9-1-1943. These circumstances lead to the conclusion that Pilley's works were carried without the direct supervision of plff. The letter dated 23rd April 1939 written by plff and the register of wiremen maintained by him together with the fact that Pilley was allowed to work on behalf of plff and raise subscription against plff. The letter shows that plff used to furnish test reports without directly supervising the works himself. This conduct of the plff was contrary to rule 48 of the I.E.Rules, 1937 and was not worthy of a contractor and to hold a competency certificate. No doubt, plff did not furnish a test report in the case of works at Anjuman Buildings, Dharwar, as at that time he came to know that a complaint had been made against Pilley (by Mr.Bhatt) P.74.

Next, grounds Nos.2,3 and 4 are practically cover the same point. It is true that plff was not called upon to explain the charges of malpractice before the decision of the board was given, under section 5 of the Act, notice has to be given to certain persons. But there is nothing in the Act or the rules under the Indian Elextricity Act, = making it obligatory upon the board to give any notice to the persons accused of malpractice and hear him. Under the circumstances, the fact that the accused was not heard would amount to an irregularity and not an illegality. Regarding ground No.4, it may be mentioned that the rules also do not compel a case to be heard only at a meeting. The matter for consideration may be circulated among the members of the board and their opinion obtained. It appears, however, from P.75 that after obtaining the opinion of the members concerned, the plff's case was put up before the Board, and on 17th April 1942, the Board, after carefully considering the case, came to the conclusion that the plff was guilty of malpractice. Such decision of the Board is final under the rules. On 29th April 1942, the Government of Bombay rejected the plff's appeal on the ground that the decision of the Board was final, (P.24).

Further, the plff claims compensation for loss as follows:-

Rs.850/-	Loss for 4 months and 11 days, ending on 31st August 1942 by reason of loss of work done by the cancellation and suspension.
Rs.480/-	Loss by reason of payments to his staff their salary for 3 months.
Rs.700/-	Loss of reputation.
Rs.300/-	Loss of work for the months of September and October (added to item No.I).
Rs.2330/-	

The plaintiff's claim on the above counts must be denied. The license and permit having been cancelled by the Board, plff would not be entitled to carry on any work and would not, therefore, be entitled to claim any loss. Moreover, Government would not be liable for damages caused by the alleged wrong order of the Licensing Board while acting under

the statutory authority given to it (i.e. Electricity Rules framed by Government). The Board has under the I.E.Rules - power to grant a license and cancel it. (Please see 1926 Mad. A.I.R. P.1084, Secretary of State Vs. Somayya; 39 Mad. I.L.R. P.781 and 28 Bom. 314.

It may be urged that the amount of damages claimed by the plff is too excessive.

DRAFT WRITTEN STATEMENT.

1. The suit is barred under the provisions of Section 56 of the Indian Electricity Act, IX of 1910.

2. The jurisdiction of the Civil Court is barred in view of the finality of the order dated 17th April 1942 made by the Licensing Board cancelling the contractor's license and suspending the supervisor's permit held by the plff, Under the powers vested in the Board by virtue of the Electricity Rules.

3. The plff has no cause of action against this deft and no suit would lie against this deft for a wrong order, if any, passed by the Licensing Board within its statutory authority.

4. The allegations in para 1 of the plaint that plff did not commit any malpractice and did not do anything offending the Electric Law and the rules thereunder are denied. The allegations to the contrary in para 3 of the plaint are denied.

5. The deft asserts that during the course of investigation on receipt of a report of malpractice and unauthorised works in the Dharwar Anjuman Islam Buildings, it was found that without plff's direct supervision, but with test reports supplied and signed by him during his absence without carrying out personally any test work, the electric works were being carried out by - wiremen Pilley and Bajpe on behalf of plff, though they were shown in the register to have been discharged from plff's services The allegations in para 3 of plaint that plff never permitted Pilley to carry out wiring works on his behalf, without his supervision and that he (plff) never furnished test reports, without carrying test works are denied.

6. The plff's case of malpractice was reported to the licensing Board which after full consideration came to the conclusion that plff was guilty of malpractice and was not worthy of holding a

17-15

contractor's license. As a result, on 17th April 1942, the Board cancelled the contractor's license and suspended the supervisor's permit held by plff. The said order of the Board is final under the Electricity Act and rules and it cannot be called into question by ~~k~~ a civil court.

7. The allegations in para 3 of the plaint are totally denied. The order of the Licensing Board is legal, justified and valid. The grounds mentioned in the said para of the plai attacking the legality of the proceedings and the order of th Board are also denied and are baseless.

8. It is ~~r~~ true that plff ~~was~~ was not served by the Board with any notice of hearing regarding the case of malpractice; but it is submitted that it was not obligatory upon the Board under the law and rules to give plff any such notice. Plff however, was awaare of action being taken against him. Under the circumstances, it is submitted that the proceedings of th Board are not vitiated for that reason and they are perfectly legal and justified. At the worst they would be irregular but not illegal.

9. The allegations in para 4 of the plaint are not - correct. Plff was allowed to complete the half-finished works which had been undertaken by him prior to the cancellation of his license. If there was any delay in permitting plff to - complete the half-done works, plff himself was responsible for them.

10. The allegations in para 5 of the plaint ~~in~~ respect of the loss of money and reputation are denied. This deft is not in any way responsible for the alleged loss to plff.

11. The allegations in para 7 of plaint are denied. The plff denies that the alleged loss in money and reputation was the result of the conduct of the deft and that such conduct was illegal and ~~justified~~ unjustified. The plff ~~is~~ is not entitled to any damages and the damages claimed are too - excessive.

12. The plff's suit be dismissed with costs.

The plaintiff in this case is an electrical contractor and as he was found to have certified works not carried out under his supervision in contravention of rule 48 of the Electiricity Rules, the Licensing Board cancelled his contractor's license and suspended for one year his supervision's permit. He now sues for declaration tht the order is ultra vires and for damages

2. The plaintiff's main grievance is that he was not given an opportunity to meet the charges. A long line of decisions has established that where a person or body is by statute given power to make an order which might affect another person's liberty or property that body must exercise the powers consistently with the principles of natural justice; and one of these principles is that the person against whom such an order is contemplated should be given a notice of the charges against him and an opportunity to offer any explanation or produce evidence to rebut the charges.. It is advisable that the Board should in such cases give a formal notice accordingly.

3. There is an arguable case for the view that the Board's omission to give such formal notice in this case does not affect the validity of its order, because the plaintiff was afforded an opportunity at an earlier stage, during the investigation of answering the charges against him. Assuming however that the order is ultra vires, an action to restrain the Board from enforcing the order may lie against the Board alone but no suit can lie against Government. Moreover the order even if be ultra vires, and even if it has caused loss or damage to the plaintiff, cannot give him a right to damages. The suit therefore can be successfully defended. Sanction may be accorded to its defence on the lines of the appended brief.

BRu
3/12

R.L.A. Rao 6/12

Secy PWD

No. 9002 8/6/14

63 ...
19

L.D. 7929
T.N.D.

El. Bra.

Submitted.

2. Pl. see the history of the case on p. 51 ante. The El. Engr. to Govt. may, in the first instance, be requested n.o. to state whether he has anything to say in the matter. He will kindly treat this case as immediate as the next date fixed for filing the written statement is the 17th Dec. 1943.

8.12.43.

8/12/43.

n.o.r. of the El. Engr. to Govt: 9th Dec. 1943.

... 6546
10 ...
...

(10.12.43

65 to 24

Below U.O.R.No.L.D.7929 dated the 8th December 1943, from Government in the Public Works Department.

L&Rus-26

No. 3993 of 1943.

Bombay, 10th December 1943.

Returned, with compliments.

2. The main point which must be stressed is that the Licensing Board never takes severe disciplinary action against any licensed contractor or competency certificate holder, unless and until definite documentary evidence is found providing such person's unworthiness to hold the license or the permit, as the case may be. When conclusive evidence is obtained, the Licensing Board does not refer the matter to the party concerned, since the explanation always given is either ignorance or oversight, neither of which excuses can be taken into consideration by the Board.

3. In this particular case, the disciplinary action of cancellation of license and suspension of permit granted to Mr. Surjansingh B.Suraj was on account of the letter he had written to Mr.Pillay on 23-4-1939 (vide page 50 of this office file). The letter written on the notepaper of Messrs.Sing Electric Works, of which Mr. Surjansingh B.Suraj is the proprietor and the signature at the bottom is of Mr.Surjansingh B.Suraj himself. As definite instructions had been issued from the Singh Electric Works to the Wireman Pillay to carry out wiring works in contravention of the Indian Electricity Rules and obtain test reports therefor by unfair means, the Board decided to take disciplinary action against the proprietor for such malpractice.

4. Whether malpractice was actually committed by wireman Pillay or not, was immeterial and in the present case if the letter written by Mr.Surjansingh to wireman Pillay had not been produced before the Board, the actual cases of malpractice would have been further investigated and every opportunity would have been given to Mr.Singh to explain his position before relying on the statement made by different consumers whose installation works had been carried out by Wireman Pillay in contravention of Rule 48 of the Indian Electricity Rules.

5. In view of the above remarks, the portion marked with a cross on page 50 requires to be modified accordingly by including the following words:

"While investigating a case of malpractice by a certain wireman named Pillay, definite documentary evidence was obtained proving the unworthiness of Mr.Surjansingh B.Suraj to hold a contractor's license and as this evidence was of an undisputable nature, disciplinary action was taken against Mr.Surjansingh B.Suraj

in accordance with the standard practice of the Licensing Board, in view of the fact that the malpractice of Mr. Surjan-singh D.Suraj came to light when the Electrical Sub-Inspector was investigating the complaints against wireman Pillay of carrying out works without proper supervision".

Electrical Engineer to Govt.

El. Br.

P.W.D.

p 63

Submitted with ref. to the O.N. within.

2. These papers may be returned w.o. to the R.L.A. with a request to consider the suggestion made by the El. Engr. to Govt. above.

10.12.43.

GD
11/12/43

w.o.r. With R.L.A. of 11th dec. 1943.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 11546
Date No. A/13-12-43

PUBLIC WORKS DEPARTMENT
File No. LD 7929
10. DEC. 1943
Serial No. 35149

El Br
10/12

Please see the Electrical Engineers endorsement at p65 ante

2 The ground suggested in para 3 of the endorsement does not seem to constitute a valid defence. A body clothed with statutory powers of a quasi-judicial character is, under a duty to exercise them in accordance with the principles of natural justice, and therefore to give to the accused person an opportunity to be heard in his own defence. This duty is unqualified: ~~Because the defence in the present case~~ The normal practice followed by the Board cannot establish that in law no such duty exists. The duty arises in all cases where action is contemplated; consequently the circumstance that the evidence on record appears to the Board to be incontrovertible has no bearing on this point. As the Board has omitted to give a notice at the final stage, the defence must, it appears, be founded on the basis that as the pleff had been appraised at

the earlier stages of what was alleged against him and has ample opportunity of explanation and adducing evidence, the requirements of the law in this behalf are substantially complied with.

3. I have slightly amended the brief at p 59 to clarify how the pfff can be said to have been so appraised, in order that the DG? may have a precise idea of the information he must obtain from the Electrical Sub-Inspector ~~as to~~ The brief may issue as thus amended

BSfer
13/12

Re A I agree with AS. The fact that the evidence against Surjansing was incontrovertible is really no ground for dispensing with the duty of hearing him before cancelling his licence & permit. We must, ~~and~~ try to show that Surjansing had been given an opportunity to explain his own part in the affair, but I do doubt whether the Court will accept it as sufficiently convincing

Rees 14/12

Suits :

Dharwar.

For a declaration that Rs. 2,330 should be awarded as past damages and further future damages should be given. The order of 17th April 1942 by the Licensing Board cancelling Licence No. Hub C7 and suspending permit No. B.G. 426 is illegal, void and inoperative.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 9202-A.

Bombay Castle, 15th December 1943.

Letter from the District Government Pleader of Dharwar, No. 403, dated the 27th July 1943—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

In the Court of the First Class Sub-Judge, Dharwar.
Civil Suit No. 36 of 1943.

Surajsingh B. Suraj .. .. .. Plaintiff;

versus

The Government of Bombay .. .. .. Defendant.

Claim—Rs. 2,330.

Endorsement by the Collector of Dharwar, No. L.A.W. 410, dated the 29th July 1943—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 9202, dated the 15th December 1943—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

original. P.N.M.

P. N. MOOS,
Secretary to Government.

G. R., No. 9202-A, L. D., dated the 15th December 1943.

To

Issued.

* The Public Works Department,
* The Commissioner, Southern Division,
* The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

C&R 1-3

* With a copy of the brief.

No. of 1944.

Copy forwarded for information and guidance to

Submitted after issue.
This may be filed in a new suit file
2/3. Add. P.H.

~~33~~
27

DHARWAR CIVIL SUIT NO. 36 OF 1943.

Chronological Statement of Facts.

This is a suit filed by Surajsingh B. Suraj of Hubli for a declaration that order of the Licensing Board dated 17th April 1942 cancelling the contractor's licence and suspending for a year the Supervisor's permit held by him is *ultra vires* and for damages.

2. It appears the plaintiff held a competency certificate, a Supervisor's permit and a Contractor's licence and carried on business as electrical Contractor at Hubli under the name and style of Singh Electric Works.

3. The Electrical Sub-Inspector, Belgaum, received information in May 1941 that installation work was being carried on at Anjuman Building, Dharwar, in contravention of rule 48 of the Electricity Rules, 1937 (applied in the Province under Government Notification, Public Works Department, No. 620/36-I, dated 22nd March 1938). The matter was immediately investigated and it was found that the work was carried out by a wireman named M. L. Pillay holding a wireman's permit issued by the Licensing Board. Pillay, when questioned, stated that he was in the employ of the plaintiff and that the work was actually carried out on his behalf. The plaintiff however alleged that wireman Pillay was discharged on 30th September 1939, and was shown as such in the Wireman's Register maintained by him. When informed about this Pillay stated that he was never informed about his discharge by the plaintiff and that has always been carrying out works in Dharwar on behalf of and under instructions from the plaintiff who had actually written to him on 23rd April 1939, acknowledging receipt of money and also confirming the mutual arrangement, viz. that the Assistant in his shop would give the test reports for works carried out by Mr. Pillay at Dharwar during the period when the plaintiff was to be away from Hubli.

4. On 4th July 1941 the Assistant Electrical Inspector submitted the papers recommending prosecution of Pillay and his apprentice Bajpe. The Electrical Inspector in reply, observed out that there were points which seemed to implicate the Singh Electric Works in general malpractice and asked for further information. The report submitted by the Electrical Sub-Inspector, Belgaum, showed that (1) the Singh Electric Works had carried out several installation works during a period of more than six months prior to the case of malpractice of Anjuman Building; (2) that most of these works were carried out by Pillay and Bajpe and the test reports in respect thereof were submitted by the Singh Electrical Works; (3) Pillay and Bajpe were shown in the plaintiff's Wiremen's Register, as working at Dharwar; (4) they were in possession of the printed order forms of Singh Electric Works. The report was corroborated by a statement signed by several consumers at Dharwar to the effect that they had given the contract for installation to the Singh Electric Works, that the work was actually executed by Pillay and Bajpe and that the test reports were submitted by the Singh Electric Works.

5. The Electrical Inspector and Secretary Licencing Board submitted the case to the Board for orders as to action to be taken against the plaintiff for certifying works not carried out under his supervision. The Board decided that the contractor's licence held by the plaintiff should be cancelled and his supervisor's permit should be suspended for one year. The Secretary by a letter dated 17th April 1942 informed the plaintiff accordingly.

6. Subsequently Pillay and Bajpe were prosecuted before the First Class Magistrate for contravention of Rule 48 and convicted and sentenced.

7. On 18th June 1942, the plaintiff gave a notice of suit and on 18th November 1942 filed the present suit for :—

(1) a declaration that the order of the Licensing Board is *ultra vires*, (2) Rs. 2,330 as damages, and (3) future damages and costs.

Grounds of Defence.

No cause of action.—The plaint discloses no cause of action for a suit as at present framed. A claim such as is made by the plaintiff can only be supported if it is shown,—

(*i*) that the plaintiff had a legal right ;

(*ii*) that the defendant, or some one for whose acts the defendant is in law answerable, has invaded the right ;

(*iii*) that such invasion is unlawful and actionable ; and

(*iv*) that it has caused loss or injury to the plaintiff.

The first three of these requirements are absent in this case, and even on the assumption that the plaintiff has suffered loss, he has no legal right to the relief he has claimed.

2. Now the alleged tort complained of by the plaintiffs is the order of the Licensing Board cancelling his contractor's permit and suspending his supervisor's permit. The right to hold the licence and permit is a creature of the Rules and Conditions prescribed under Government Notification, Public Works Department, No. 620/36-I, dated 28th August 1941. Under rule 29 the grant of a licence is in the discretion of the Board ; see particularly the proviso to that rule. Moreover, the licence is liable to be cancelled by the Board, under rules 35A and 45. The right of the grantee to hold the licence for the period specified is thus qualified and limited by the Board's power to cancel it. The plaintiff therefore has no legal right to hold the licence free from the liability to cancellation by the Board. The Board's order therefore, cannot constitute an invasion of a legal right.

The same considerations apply as respects the supervisor's permit in view of rule 26.

3. *Merits.*—The order of the Board is *intra vires*. Under rules 26, 35-A and 45, the Board has power to withdraw or suspend a permit or to cancel a licence if the holder is guilty of malpractices or is not a fit person. The powers given to the Board are in the nature of a disciplinary jurisdiction intended to secure in public interest that no person practicing the trade indulges in malpractices. Its position is that of a domestic tribunal, similar to that of the General Medical Council, and its powers are quasi-judicial. The Board must act fairly and must give to the accused an opportunity to meet the charge made against him. It is settled law that an order passed by a body exercising such jurisdiction cannot be reviewed by the Court unless the plaintiff can show (1) that the members of the body were interested or biased by corruption or otherwise influenced by malice in deciding as they did ; or (2) that the principles of natural justice has been violated : see Allbut *vs.* General Medical Council 23 Q. B. D. 400 ; Allison *vs.* General Medical Council (1894) 12BD 750 ; Thompson *vs.* New South Wales Branch of the British Medical Association, 1924 A.C. 164 J.C. ; Osgood *vs.* Nelson, (1872) 5 H.L. 636 ; Maneckjee *vs.* Mun. Commissioner of Bombay, 32 Bom. L.R. 463.

The plaintiff in this case does not allege bias or corruption etc. on the part of the Board, but he contends that the procedure adopted by the Board violated the principles of

natural justice. The principles of natural justice applicable in this case are that the Board was bound to act in good faith and fairly listen to both sides: see Board of Education *vs.* Rice (1911) A.C. 179; Local Government Board *vs.* Arlidge (1915) A.C. 120 at pages 132–133. The procedure to be adopted so as to comply with those principles must depend on the powers which the body has.

In this case, the Board has no power to summon witnesses or to administer an oath. Its office moreover is situated at considerable distance from the place where the accused and the witnesses live, and it would have involved enormous cost and delay to require all the witnesses to appear before the Board. The principles of natural justice cannot be said, therefore, to require the Board to hold a regular trial on the lines of a Criminal trial in the Courts, but are plainly satisfied by a less formal procedure. The Board would have left no room for complaint under this head if it had given a notice to the plaintiff stating what the charges against him were and asking him to offer such explanation in that behalf as he thought fit. As is apparent from facts stated above, the malpractice on the part of the plaintiff came to light while an allegation of malpractice on the part of wireman Pillay was being inquired into. The procedure adopted by the Sub-Inspector seems to have been to interview both Pillay and the plaintiff to put to each the statements received from the other and to make a record of his answer thereto. Thus the plaintiff was at an early stage apprised of Pillay's statements which necessarily implied malpractice on the plaintiff's part, and the plaintiff had opportunity of which he availed himself, of explaining himself and adducing evidence. Thus, for instance, the plaintiff had an opportunity to produce his wiremen's register showing that Pillay was discharged from service long since. The District Government Pleader should obtain precise information, preferably in writing, from the Electrical Sub-Inspector who carried out the investigation as to the occasions on which and manner in which the plaintiff was apprised of the allegations made against him and given opportunity to offer his explanation. The important details should be stated in the written statement. The evidence on the point, including such notes of the investigation as may be available should be placed before the Court. There was no point in giving further notice to the plaintiff if he had already said all that he had to say and had produced all the evidence which he could produce. As the Board could not summon witnesses or record evidence on oath, it was powerless to afford to the plaintiff an opportunity to cross-examine any witness. It should be urged therefore that in the circumstances the procedure adopted was sufficient compliance with the principles of natural justice. And as there was evidence upon which the Board could find that the plaintiff had been guilty of malpractices, the order passed by it cannot be questioned.

4. Assuming for a moment that the procedure of the Board was inconsistent with the principles of natural justice, or that there was no evidence before it, then the only remedy open to the plaintiff was to obtain an injunction to restrain the Board from treating it as a legally valid order: *See Ex-parte* Partridge (1887) 19 Q.B.D. 467.

It must however be emphasised that no action lies against the Board or its members for compensation for loss resulting from such an order, unless it is shown that the Board was actuated by malice: *See* Partridge *vs.* General Medical Council (1890) 25 Q.B.D. 90; Thompson *vs.* New South Wales Branch of the British Medical Association 1924 A.C. 764 J.C. The principle applicable to the case is that stated by Lord Moulton in the following terms:

" If a man is required in the discharge of a public duty to make a decision which affects, by its legal consequences, the liberty or property of others, and he performs that duty and makes that decision honestly and in good faith, it is, in my opinion, a fundamental principle of our law that he is protected". Everett *vs.* Griffiths (1921) 1 A.C. 631 at page 695.

Even on the assumption that the Board's order is illegal, it does not constitute an actionable wrong.

5. Moreover, if indeed it were an actionable wrong, the Provincial Government is not answerable in respect thereof. In the first place the Board is an independent statutory body and not merely an agent of Government and there is no rule or principle of law under which liability for an act of the Board can be fixed upon the Provincial Government. Secondly, on the further assumption that the Board was an agent of Government, it is now settled law that Government is not liable in damages for a tortious act of a servant or agent committed in the performance of the sovereign or proper functions of Government delegated to him or in the exercise of powers entrusted to him by statute : P. & O. S. N. Co. *vs.* Secretary of State 5 Bom. H. C. R. App. I ; Etti. *vs.* Secretary of State I. L. R. 1939 Mad. 843 ; Shivabhajan *vs.* Secretary of State I. L. R. 28 Bom. 314. As the Board's order was passed in pursuance of a statutory rule, Government is not liable in damages.

6. Without prejudice to the foregoing contentions it should be urged that the claim to damages is not tenable. Damages can be awarded in respect only of the injury *directly* resulting from the alleged tort, and in assessing them regard cannot be had to consequences which do not arise directly from the tort and are but remotely connected therewith : *See* Ancelia McColl *vs*, Canadian Pacific Railway (1922) 33 M.L.T. 219 (P.C.). A wrongdoer is not liable for consequences which although indirectly arising from the wrong complained of, do not so immediately flow from it that he can be made responsible for it : Secretary of State *vs.* Gokul Chand I. L. R. 6 Lah. 451.

The plaintiff in this case claims damages for loss resulting from his having ceased to carry on his business. The question therefore is whether the loss can be said to arise directly out of the Board's order. If the order was *ultra vires* it was a nullity in law, and could not have prevented the plaintiff from carrying on his business. If he was prosecuted for contravention of rule 48 of the Electricity Rules, the prosecution was bound to fail upon it being shown that the order was *ultra vires* : of Emperor *vs.* Yar Mahomedkhan, 40 Bom. L.R. 483. It cannot, therefore, be said that the order prevented him from carrying on his business. It would appear that he voluntarily decided to cease business. The course of conduct, from which the alleged loss has arisen, was adopted by him of his own free-will, and cannot be said to be the direct consequence of the Board's order.

Further, the claim is grossly exaggerated. The licence which was cancelled in April 1942 was to endure for a period ending 9th June 1942. The plaintiff had no legal right to a renewal, in view of the proviso to rule 29. Consequently, he can claim no compensation in respect of the period subsequent to 9th June. The order did not and indeed could not prevent the plaintiff from applying afresh for a licence either immediately or at any time after 9th June.

7. For all these reasons it should be urged that the suit fails and should be dismissed with costs,

S. Dwg. /44

3/3/44

31

L.C.Suit No.36 of 1943.

In the Court of the First Class Sub-Judge,

at Dharwar.

Plff:-Surajsingh R.Suraj, Sikh, aged about 40 Electrical Contractor and Supervisor of Hubli.

Vs.

Deft:-The Government of Bombay Province, Bombay.

Claim Rs.2335-0-0

The plff above named begs to state as under:-

1. The plff herein has been an Electrical Contractor and Supervisor holding Contractor's license and Supervisor's permit during the last about 10 years since 1932. He has been carrying on electric installation works since then and has his said business in Belgaum, Dharwar and Hubli and occasionally Kanara District. Contractor's license, having been originally granted to him as per rules and conditions in regard thereto, was being renewed from year to year as a matter of course and without any hitch whatever. His record all throughout the period of his license and permit as contractor & supervisor has been quite good and unexceptionable and his business reputation has been all throughout of a high order. He never committ-ed any malpractice himself nor did he do anything which would offend against any law or rules in connection with the Indian Electricity Act or Rules thereunder; he even helped Government by reporting such cases of suspected malpractice as came to his knowledge directly or otherwise.

2. On 20th April 1942, however, plff received a communication Ex.17/199 of 17th April 1942 of the Electrical Department from the Secretary, Licensing Board, Bombay, the relevant portion which is as follows:-

"On investigating a case of malpractice at Dharwar, it has been found that you (plff) have permitted Mr.Pilley, a wireman, to carry out wiring works on your (plff's) behalf without your (plff's) direct supervision and that you (plff) have even furnished test reports for such works without carrying out the testing work your-self (plff). The Licensing Board have considered you (plff) as unworthy of holding a contractor's license on account of your (plff's) malpractice and have therefore cancelled the contractor's license No.HUB C.7 granted to you (plff). The board have also suspended your (plff(s) Supervisor's permit No.B.S.426 for a period of one year from the date hereof."

3. The order passed by the licensing board cancelling the plff's contractor's license and suspending his supervisor's permit has been wholly illegal, unjust, invalid and inoperative. Plff very confidently maintains that he has not been guilty of the malpractice alleged against him in the said communication and that he has done

nothing whatever to justify the board in considering him unworthy of holding a contractor's License and a supervisor's permit. This cancellation of the plff's contractor's license and suspension of his supervisor's permit on the grounds alleged in the said communication have caused him very serious harm entailing heavy pecuniary loss and loss of reputation. The Board has passed the order without giving plff any opportunity of being heard in defence; he has never apprised of any charge of malpractice against him or any other action on his part amounting to misconduct; he has been condemned to consequences resulting from the said order unheard and without having the opportuni., of making the defence. Plff does not admit that the order has been passed in a legally convened and legally held meeting of the Board and he - challanges the legality of the Board's proceedings, if any, from every point of view. Further the rules of even natural justice have been wholly ignored and have not been followed; the board have not given him any notice of the alleged malpractice, have not given him any opportunity of defending himself and have not acted in good faith. The finding referred to in the said communication has been reached in bad faith without observing the rules of natural justice at the instance of one Mr.Pilley who was reported against by plff's office manager Mr.A.M.Bhat for a suspected malpractice as per plff's general instructions to report suspected - malpractices to the authorities concerned. Plff emphatically denies that he ever permitted Mr.Pilley to carry out wiring works on his behalf without his supervision and that he ever furnished test reports without carrying out the testing work himself. Immediately on his receipt of the said order on 20th April 194. and several times thereafter plff made several urgent representations to the Secretary of the Licensing Board to the Secretary and Deputy Secretary to the Government of Bombay. P.W.D. for withdrawing the said order of cancellation and suspension passed without hearing him but to no avail. He requested them to let him know the evidence alleged to have recorded against him, to give him an - opportunity of making his defence and to re-hear the case against him these requests were never heeded to and were turned down. All this conduct has been wholly unjustified and deliberately harassing and malafide.

4. Plff had undertaken some electric installation works before the cancellation of his license and the suspension of his permit and

33 49

these works had been half-finished when the said order was received. Several urgent representations were made by him to the Board requesting permission to complete the said works and submit test reports in respect thereof; but no relief was given in time and one of the urgent works was completed by others.

5. Plff has suffered as said above heavy loss in money and reputation and the defendent Government is legally bound to make good the loss to him; he is further entitled to be maintained in his rights and to a declaration of the invalidity and illegality of the order of cancellation of his license and suspension of his permit. He has been prevented from undertaking any electric works pending the period of notice and pending this suit for which the notice was given.

6. Plff's contractor's license, under the rules connected therewith, should have ordinarily expired on the 9th June 1942 and an application for the renewal thereof with the renewal fee should have been made by him to the Licensing Board and the same should have been granted as a matter of course without any hitch as has been done during the past several years. He has always been ready and willing to pay the renewal fees and apply for its renewal; he was prevented from doing so as the license itself was unjustly and illegally - cancelled.

7. As a direct and immediate result of the wholly unjustified and illegal conduct on the part of the Government authorities (deft) as mentioned above, plff has suffered pecuniary loss and at a modest scale the said loss is as under:-

Rs.850/-	Loss for four months and eleven days ending on 31st August 1942 by reason of loss of work due to cancellation and suspension.
Rs.480/-	Loss by reason of payments to his staff their salary for three months.
" 2000/-	For loss of reputation.

This sum of Rs.3330/- having been his direct and immediate loss, the deft Government is in law bound to reimburse him to that extent and they have to pay him his further loss pending the period of the notice and this suit.

Though the real loss of reputation can and should have been assessed at Rs.2000/- the plff for the sake of this suit has assessed it at Rs. 700/- only and has given up the balance of Rs.1300/- To the item of plff's loss of work due to cancellation and suspension has to be added a sum of Rs.300/- at the rate of Rs.150/- a month for the months of September and October 1942; hence the total claim

is Rs.2330/-.

8. Plff is under the circumstances being forced to file and therefore files this suit against the defendents, the Government of Bombay Province, for a declaration that the said order of the Licensing Board is wholly illegal, void and inoperative, and cancellation of the said order; for recovery of Rs.2330/- as immediate damages, for further damages and for such other reliefs including costs as he may in justice be entitled to.

9. The cause of action for the suit has arisen since the date of the said order of the Licensing Board and has been continuing so long as reliefs mentioned above are not granted.

10. Plff has been a Sikh resident of Hubli aged about 40, his occupation being Electrical contractor and supervisor; he has his business at Hubli, Dharwar, Belgaum and Kanara districts; cause of action for the suit having arisen in all these places and the suit being against the Government it is filed in the First Class Sub-Judge's court, Dharwar, which court has jurisdiction to try it.

11. Notice of the suit has been given as required by section 80 of the C.P.C.

12. For purposes of court fees and jurisdiction, the suit is valued as under:-

Rs.2330/ for recovery of damages
" 2330/-Court fee is paid on Rs.2335/-

13. The plff on the aforesaid grounds among others, prays for a decre in his favour and against the defendents after declaring the order dated 17th April 1942 mentioned in para 2 above as being illegal, void and inoperative and therefore ~~xxxxxxxxxx~~ cancelling the same and awarding him Rs.2330/- as past damages and further awarding his future damages and costs from the deft.

16-11-1942.

Sd/ Surajsingh R. Suraj

Presented on 18-11-1942.

Sd/ N.R.Koppikar

Pleader.

IN THE COURT OF THE FIRST CLASS SUB-JUDGE,
AT DHARWAR.

L.C. Suit No.36 of 1943.

Surajsingh B. Suraj of Hubli; Plaintiff;
v/s
The Government of Bombay Provin.. .... Defendant.
Claim Rs.

Written statement of the defendant abovenamed is as follows:-

1. The plaint discloses no cause of action. The existence of any grounds on which a claim can be legally supported is denied.

2. Assuming but not admitting that the plaintiff has suffered any loss it is submitted that he has no legal right to the relief claimed.

3. The contractor's license and the supervisor's permit are granted in the discretion of the Licensing Board and the Board also has the power to cancel the same. The plaintiff's right to hold the license and permit for the period specified was qualified and limited by the Board's power to cancel them. There was thus no invasion of the plaintiff's right. Plaintiff's rights are governed by the rules and conditions prescribed under Government Notification, P.W.D. No.620/36-1 dated 28th August 1941.

4. The order of the Licensing Board dated 17th April 1942 mentioned in paragraph 2 of the plaint cancelling the plaintiff's license and permit is legal and valid and is binding on the plaintiff. Allegations to the contrary in paragraphs 5 to 6 of the plaint are denied.

5. The defendant submits that the plaintiff was held to be guilty of malpractice and unworthy of holding a license, as the plaintiff was found to have permitted certain electric works at Dharwar in the Anjuman Islam buildings and also in other buildings to be carried on by the wiremen Pillay and Bajpay who were not then in plaintiff's employment, and without the plaintiff's direct supervision; but the test reports were signed and supplied to them during the plaintiff's absence.

The allegations to the contrary regarding malpractice made in paras 1 and 3 of plaint are denied.

6. The allegations in paragraph 3 of the plaint regarding violation of principles of natural justice on the part of the Board are denied. The plaintiff had been apprised at an early stage of Wireman Pillay's statements which implied malpractice on plaintiff's part, and plaintiff had opportunity of which he availed himself, of explaining himself and adducing evidence. There was no point in giving further notice to plaintiff as he had already said all he wanted to say and had produced all the evidence which he could produce. The Board is not required to hold a formal trial and the procedure adopted by it was sufficient compliance with the principles of natural justice.

7. Under the circumstances the order of the Licensing Board of 17th April 1942 based upon evidence of malpractice was a valid and binding order and the civil court cannot question or review the same. Assuming, but not admitting that the procedure of the Board was inconsistent with the principles of natural justice, plaintiff has failed to follow the proper remedy.

8. The allegations in paragraph 4 of the plaint are not admitted. It is submitted that the Plaintiff was allowed to complete the half-finished works undertaken by him prior to the cancellation of the license, and that plaintiff was himself responsible for any delay caused.

9. The Board was not actuated by any malice. Nor are there any allegations of malice in the plaint. Therefore neither this defendant nor the Board or its members are liable to compensate the plaintiff for his alleged loss. The Board's order does not constitute an actionable wrong.

10. Even assuming that there was an actionable wrong, the Board is a statutory body and liability for its acts cannot be fixed on Government. Government is also not liable for the tortious acts of its agents.

11. Plaintiff's claim to damages is remote and not tenable, and is not admitted as to any portion thereof. It is denied that the alleged stoppage of plaintiff's business

was the direct consequence of the Board's order. Besides, the plaintiff's claim is highly exaggerated and in any event he is not entitled to any compensation in respect of the period subsequent to 9th June 1942, as, thereafter plaintiff had no legal right for the renewal of the license.

12. Plaintiff is not entitled to any relief and his suit should be dismissed with costs.

District Government Pleader, Dharwar.

I District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 12 above is true according to the information received and believed to be true. This verification is made at this day of 1944.

District Government Pleader, Dharwar.

57 39 2

Copy was applied for

Clerk of the Court.

Copy was ready for delivery on the

Clerk of the Court.

Copy was delivered (sent by post) on the

Clerk of the Court.

Received on 18-11-1942
Registered on 11-1-1943
Decided on 15-1-1945.
Duration 2 years 1 month and 28 days.

In the Court of the First Class Subjudge, Dharwar,
At Dharwar. Ex.92.

L.C.Civil Suit No.36 of 1943. Ex.92.

Pleaders
Mr.N.R.Koppikar

1. Surjansingh B.Suraj Electrical contractor and Supervisor, Hubli. - - - - Plaintiff

Vs.

Mr.Malapur.

1. The Government of Bombay Province. -- - Defendant.

Claim Rs.2330/-.

The plff sues to obtain a declaration that the order, - dated the 17th April 1942 passed by the Licensing Board, Electrical - Department, P.W.D. Bombay cancelling his Electric contractor's license and suspending for a period of one year his superviser's permit was illegal - ultra vires and void and for cancelling the said order and to recover a sum of Rs.2330/- from the Government of Bombay by way of damages and costs of - suit.

Plaintiff alleges in the plaint that he was sikh resident of Hublix, that he was holding the Electrical contractor's license and - supervisor's permit since the year 1932, that he was carrying on Electric - Installation works since then and has his said business in Belgaum, Dharwar Hubli and occasionally in North Kanara District, that his contractor's - license was being renewed every year in accordance with the rules framed by the Government that this work and reputation has been good throughout, that he had never committed any malapractice nor has he offended any law or rules made under the Electricity Act, that on the 20th April 1942, he, however - received a communication No. Ex.17/1999 dated the 17th April 1942 from the Secretary, Licensing Board, Bombay, the relevent portion of which reads as follows :-

" On investing a case of malapractice at Dharwar, it has been - found that you have permitted Mr.Pilley a wireman, to carry out wiring works on your behalf without your direct supervision and that you have even - furnished Test reports for such works without carrying out the testing work yourself. The Licensing Board have considered you as unworthy of holding a contractor&s license on account of your malapractice and have therefore - cancelled the contractor's License No.Hubli C.7 granted to you. The Board have also suspended your Supervisor's permit No.B.S.426 for a period of one year from the date hereof"

The order passed by the Board was wholly illegal, unjust, invalid and inoperative, that as a matter of fact, the plff has done nothing whatever to justify the Board in considering him unworthy of holding the contractor's license and the Supervisor's permit, that the Board has passed the order [illegible] giving the plff any opportunity of being heard in his defence, that he was - never approved of any charges of malpractice against him or anyother action on his part amounting to his conduct, that the plff has suffered loss of - reputation and pecuniary loss by reason of the cancellation of his license and permit, that the Board has not followed the principles of natural justice in - passing the order against the plff, that on receipt of the order he represented to the Secretary of the Board and also to the Secretary and Deputy Secretary to the to the Government of Bombay P.W.D. to give him an opportunity of making his defence and to rehear the case against him and in the meanwhile to w[illegible]ra the order of cancellation but that his request was turned down, that plff does not admit that the order in question has been passed in a legally convened and legally held meeting of the Board and he challenges the legality of the Board's proceedings, if any, from every point of view, that the Provincial Government - of Bombay was legally bound to make good the loss to him, that he has given the notice to the Government as required by section 80 of the C.P.Code and that - he has in all claimed a sum of Rs.2330/- by way of damages including a sum of Rs.700/- ~~fairs~~ for loss of reputation.

The Deft Government in its written statement Ex.16 contends that the plaint does not disclose any cause of action against the Government, that assuming that the plff has suffered any loss, pecuniary or otherwise, he has no legal right to the relief claimed, that the contractor's license and the supervisor's permit are granted in the discretion of the Licensing Board and

the Board has power to cancel the same at any time, that the plff's - rights are governed by the rules and conditions presented under Government notification, P.W.D.No.620/36-1, dated the 28th August 1941, that the order of the Licensing Board dated 17th April 1942 cancelling the plff's license and permit was legal and valid and binding upon the plff, that the plff was held quitely guilty of malpractice and unworthy of holding a - license as he was found to have permitted certain electric works in the - Anjuman Islam buildings at Dharwar and in other buildings to be carried on by the wiremen Pillay and Bajpay who were not then in plff's employment, and without the plff's direct supervision and that Test Test reports were signed and supplied to them during his absence. That the allegations in - para 3 of the plaint regarding Violation of principles of natural justice on the Board are denied that as a matter of fact the plff had been - apprised at an early stage of wireman Pillay's statements which inspired malpractice on plff's part and plff had opportunity of which he availed - himself of explaining himself and adducing evidence, that the Board is - not required to hold a formal trial and the procedure adopted by it was sufficient compliance with the principles of natural justice, that under the circumstances, the order of the Licensing Board of 17th April 1942 - based upon evidence of malpractice was a valid and binding order and the Civil Court cannot question or review the same, that assuming that the - procedure of the Board was inconsistent with the principles of natural justice, the plff has failed to follow the proper remedy that plff was - allowed to complete the half finished works under taken by him prior to the cancellation of his license and that plff was himself responsible - for any delay caused, that the Board was not actuated by any malice - towards the plff, that therefore neither the Government, nor the Board or its members individually are liable to compensate the plff for his alleged losses and that the Board's order does not constitute an actionable - wrong, that even assuming that the Board, has committed any actionable wrong, the Board being a statutory body, no liability for its acts can be fixed on Government and that Government is also further not liable for - the Tortions acts of its agents, that the plff's claim for damages was - too remote and not admitted by as to any portion thereof ; besides the clai

is highly exaggerated and in any event, plff is not entitled to any compensation in respect of the period subsequent to 9th June 1942, on - thereafter plff had no legal right for the renewal of the license, that plff was not entitled to any relief, that the suit should be dismissed and Government's costs awarded.

On the above pleadings, the following issues were framed at - Ex.38.

Issues.

1. Does plff prove that the Licensing Board did not apprise him of the - mal-practices with which he was charged and did not give him any - opportunity to defend himself as alleged in the plaint ?
2. If so, is the cancellation of his contractor's license and supervised permit by the Board unlawful, ultra vires and void.
3. Does plff prove that the meeting of the Board wh in which his license was cancelled and permit suspended was not legally convened or held ; if so is the order of cancellation void ?
4. Does plff prove that the Board failed to observe the principles of - natural justice in cancelling his license and permit ?
5. Has plff sustained any and what damages by reason of the cancellation of his license, and permit ?
6. Has this court jurisdiction to try this suit ?
7. Is Government liable for the action of the Board in cancelling the plff's license and permit ?
8. What decree should be passed ?

Findings.

1. Yes ; but the plff knew the facts constituting the malpractice and he was aware of the inquiry made by the P.W.D. Officers, Electrical branch.
2. Not proved.
3. Not proved.
4. Does not survive ; plff knew the charges against him and he was conscious of his own guilt.
5. Does not survive ; if survives I would put the amount of - damages at about Rs.500/-.
6. Yes.
7. No.
8. Suit dismissed with costs.

Reasons.

There is not much of oral evidence in this case. Plff is - examined at Ex.64 and one Mr.Pillay a wireman, at Ex.68 on behalf of the Government. The plff is a Sikh residing of Hubli . He held a Superviser's permit and a contractor's license since the year 1932. His head office is at Hubli and his principal place of business is Hubli. The Secretary Licensing Board informedthe plff by his letter, dated the 17th April 1942 that his - contractor's license has been cancelled and his supervisor's permit suspended for a period of one year from the date of the order (Vide Ex.34). The reason for the order has been thus stated in Ex.34 :- ' on investigating a case of malpractice at Dharwar, it has been found that you have permitted Mr.Pillay, a wireman to carry out wiring works on your behalf without - your direct supervision and that you have even furnished Test reports for such works without carrying out the Testing work yourself. The Licensing - Board have considered you as unworthy of holding a contractor's license on account of your malpractice and have therefore cancelled the contractor's - license No.Hubli C.7 granted to you. The Board have also suspended your - Superviser's permit No.B.S.426 for a period of one year from date hereof'.

In order to understand and appreciate the order passed - against the plff, it is necessary to give certain facts regarding the - inquiry made as a result of which the order was passed. There is a - building at Dharwar, called New Anjuman Buildings which consits of a row of shop buildings. In one of the shops was located the office of what is called the modern Industrial Works ' of which one Mr.Bhat was the manager in - May 1941. He made a report on 14-5-1941 to the Electric Sub-Inspector - Belgaum that in the shops adjoining the one occupied by him, an electric Installation work has been carried out apparently by an unauthorised person (Vide Ex.19). In this letter he did not disclose the names of the persons who carried out the installation work. He was asked by the Assistant - Electrical Inspector, Poona to disclose the names of the persons who carried out the work (Vide Ex.20). He gave out the names of one Pillay and an - apprentice ixx.or the persons who did the wiring work (Vide Ex.21). It is significant to note that two days after Mr.A.M.Bhat sent his first report as manager Industrial Works (Ex.19), he in his capacity as Office Manager

Dharwar, Branch of the plff's concern at Hubli, sent a similar report to the Electric Inspector Poona (Vide Ex.22) On the 27th May 1941, Bhat - asked for permission for rewiring on behalf of and as the manag branch - manager of the plff (Vide Ex.23). This permission was refused until such time the proprietor of the premises gave in writing as to who actually - carried out the work (Vide Ex.24). On 13-6-1941 Mr.A.M.Bhat wrote on - behalf of plff, a letter to the Assistant Electrical Inspector Poona. As it is of some importance I give below relevent extracts :- " We enclose herewith a copy of letter, dated 10th June 1941, addressed to us by Abdulrahiman - Saheb contractor, the owner of the New Anjuman Buildings. With regard to the statements made in the said letter we beg to state as follows -

(1) That the two persons mentioned in the said letter do not belong to our regular working staff. Mr.Pillay was in our employment some time ago but he was discharged from our service several months back as can be - evidenced from our staff roll.

(2) That Mr.Pillay is not authorised by us to accept contracts on our behalf and we accept no responsibility for the contract signed by him nor for the work carried out by him without our supervision.

(3) That the printed order fram form referred to in the said letter appears to have been obtained by Mr.Pillay from the office when he was on our staff several months ago and apparently he has made unauthorised use of form ".

By this letter he again asked for permission for rewiring of the installation ' under our supervision by our staff as the owner has - given the names of the persons who actually carried out the work (Vide Ex.32) But permission for reqiring was refused until further orders (Vide Ex.26). The Assistant Electrical Inspector Poona, in his letter , dated 4th July 1941 to the Electric Inspector , Bombay Province recommended the prosecution of Pillay and the apprentice Bajpay who helped him in the work of installation in the New Anjuman Buildings. In this letter he refers to 'the practice of - these wiremen that they themselves undertake wiring work illegally and - approach some contractors for signing the test reports after the execution - of the works without the direct supervision of class I competency certificate holder with a view to get the installation connected to the supply - company's mains ' (Vide Ex.33). Accordingly, Pillay & Bajape were prosecuted

65 45

and fined Rs.15/- each (Vide Ex.36).

During the course of the inquiry, Pillay and Bajpay had made - statements to the effect that they had carried out many installation - works since a long time at Dharwar on behalf of Mr.Sing, Hubli (plff), that they also carried out the work in the New Anjuman Buildings on - behalf of Singh who had told them to give the Test report as in the case of other works carried out by them and that Mr.Sing refused to give the - Test report afterwards on learning that a report has been made by Mr.Bhat to the Electric Sub-Inspector Belgaum (Vide Exs.50 and 51). In Ex.50, the have narrated the circumstances under which the wiring in the New Anjuman Buildings was carried out and how things were miscarried. The owner's - signature was taken on the order Form supplied to Pillay by Singh on - 8-5-1941 and the work was immediately commenced and finished in one day. - Here are some of the extracts from Ex.50 :- " At that time Singh was - present and he also informed Bajpay to take up the work on hand with - intimation to his Dharwar representative Mr.Bhat. The latter was not at Dharwar at that time; we awaited for his arrival for two days and after words commenced the work owing to the pressure of the owner of the buildin and it was finished in a day. Mr.Bhat came afterwards and we informed him about the work executed as per Sing's oral instructions. Mr.Bhat informed to ask Singh only regarding the report to be made to the Government. Mr.Si was then requested to kindly instruct Mr.Bhat in the matter. Mr.Singh gave a chit to Mr.Bhat but the latter was not at Dharwar at that time. The chit was delivered to Mr.Bhat on his return but Mr.Bhat said that he had alread sent a report to the Government "

The chit or note given by Singh (plff) to Mr.Bhat is at Ex.66. It is dated 14-5-1941. It reads thus :- " Dear Mr.Bhat, in Dharwar, there is one connection about 4½ points fitting . So, pleade help my - friend and oblige ". Mr.Singh has admitted in his deposition that Ex.66 is signed by him and the friend referred to therein is Pillay. Therefore The four and half points fitting was apparently the work carried out by - Pillay and Bajpay in the New Anjuman Buildings. But as Mr.Bhat had already made the report on the same day i.e. 14-5-1941 (Ex.19), he could not help Sing's friend and Pillay. That is how things were miscarried and Singh repudiated Pillay and the work executed by him and refused to furnish

the Test report. In this connection, it will be profitable to refer to the statements made by Pillay and Singh in their depositions

In his examination-in-chief Pillay stated :- ' I know plff. I was working as wireman under him for from 1938 to 1941. The last work I executed on his behalf was at the Anjuman Buildings Dharwar. The plff was giving the Test Reports regarding the works carried out by me at Dharwar. The plff was supplying me with his order forms. I have taken orders from the consumers - on the forms supplied by the plff. Myself and one Bajpay, an apprentice, - were carrying out the works at Dharwar. Plff was supervising the works carried out by me us '. To questions put by the court after the cross-examination was over he made the following statement :- ' plff was not giving me any sala[redacted] or wages. The understanding between myself and the plff was that he should supply me with the order forms, that I should get orders on the said forms and carry out the work myself at my expense and that he should supply with Test - reports. I was entering into the contracts with the house owners for installation and wiring etc but in the name of plff. I was purchasing the materials - independently of the plff at the stores in Hubli and Dharwar. I have carried out installations in about 100 buildings at Dharwar in the name of the plff. Plaintiff was testing some installations but not all before issuing Test - reports. I used to pay him 8 annas per point for issuing Test reports. I have sent some money to the plff by postal money order. Most of it, I used to pay - him at here at Dharwar when he came and also at Hubli when I went there. I have with me some money order receipts. I have brought them to court and will - produce them. I have with me some order forms which I shall also produce. I was recovering money from the consumers. I was signing the order forms for the plff. Plff did not give a Test report for the work carried out in the - Anjuman buildings because Bhat had made a report to the Government that the wor was executed by unlicensed persons ".

Now Mr.Singh has made the following statement in his - examination-chief :- Pillay was on my staff for a month or two in 1939 or 1940. He was not in my service in 1941-42. Still I used to employ him - temporarily for work at Dharwar or Hubli. Under the rules, I am required to keep a register of wiremen working under me. I have maintained a register - for 1941-42. Pillay's name is not entered in the said register. Pillay has -

executed works for me in 1941-42 - may be 2 or 4 - when he was not in my register . I ~~xxxx~~ am not in a position to say whether Pillay has - executed installation works of the house owners mentioned in Ex.52. Pilly and my other servants have done the wiring in the houses of Saunshi - . Subjudge and Principal G.B.Jathar and others at Bombay. I have given Test reports of the works executed by Pillay and others at Dharwar --- Pillay was not working on my behalf in the Anjuman Islam buildings at Dharwar.Bha was the manager of my branch Office at Dharwar. I knew that Bhat had made a report against unauthorised works of Pillay. Mr.Thakar - Electric Sub - Inspector Belgaum had come to my office at Hubli and took a copy of the - registers of ~~xxxxx~~ workmen working under me. I did not know ~~xxx~~ that it was - in connection with the inquiry against Pillay

Plaintiff was again examined by the court after Pillay's statement was recorded. To questions put to him by the court he has stated as - follows :- one Pillay has carried out about 50 or 60 works on my behalf at Dharwar from 1938 to 1941. Some times I got some of the orders direct from the consumers and sometimes through Pillay and some times through another man. Sometimes the consumers themselves ~~xxxx~~ supplying the materials and - some times Pillay was purchasing them in the market. Sometimes Pillay was collecting the amount of the bills and sometimes Mr.Bhat. Pillay was not - paying anything to me for signing Test Reports. It is a fact that Pillay was sending money to me from Dharwar. This money was out of the bills - collected from the consumers and for the price of the articles purchased by him from me. I was paying pillay on contract basis i.e. from 8 annas to - Re.two per point for his labour charges. "----

As between the two versions, I am inclined to believe Pillay - rathern than Singh. Exs.70 to 75' are some of the order forms on which - Pillay secured orders from house owners for installation works. The earlies is dated 18-2-1939. These order forms were admittedly supplied to him by the plff. Exs.76 to 87 show that Pillay was sending money by postal money order to Singh from time to time since 1939. I am not at all inclined to believe - Singh when he states that he was personally supervising the works carried out by Pillay. It appears pretty clear that Pillay was taking contracts - direct from the house owners, carrying out the works on his own responsibility and procuring Test reports from the plff for which the latter received some payments. As Pillay was not a licensed contractor, he was using the

forms of the plff with the latter's consent but the contracts were his and he was responsible for both the losses and profits. Plff has not produced any materials before the court to show that as a matter of fact, he was - the real contractor and that he engaged Pillay on contract basis. Ex.52 - contains the namesof house owners in whose houses Pillay carried out the - works of installation. The owners have signed against their names - acknowledging the facts that it was Pillay who took orders from them and who carried out the installation works. Ex.27 is copy of the register of - wiremen and apprentices kept by the plff. It shows that Pillay was in the - employment of plff from 30-11-1938 to 30-9-1939 only. Thereafter he was never in the regular employment of plff. That plff himself was not carrying out the Test reports in all the installation works carried out by Pillay is apparent from his own letter, dated 23-4-1939 written by him to Pillay (Vide Ex.91). In this letter written in Kannad but signed by Singh , it is stated that he was going home in 4 or 5 days 'time ; that he had kept his assistant in the office who is instructed to furnish Test reports in case any new works were carried out in his absence. Ex.91 is written on the letter form of the plff. The letter has denied that the signature below it is his . But this denial is futile in view of the fact that there are on the record many documents bear in the plff's signatures. Upon a comparison of the signature on Ex.91 with his other admitted signatures on other documents even a layman will be convinced beyond doubt that the signature on Ex.91 is that of the plff.

Certain facts having come to light in the inquiry, the Electric Inspector Bombay directed the Poona Office to get a copy of the register of wiremen - kept by the plff (Vide Ex.41). The Electrical Sub-Inspector Belgaum got the copy made (Ex.27) and sent it to Poona (Vide Ex.42).In this connection, the letter, dated 15th July 1941 written by the Electrical Inspector, Bombay to the Assistant Electrical Inspector, Poona is important and relevent. I give below the relevent extracts from the said letter (Vide Ex.46)

(1) The Assistant Electrical Inspector should obtain information - of the exact date or dates between which the wiring work was carried on.

(2) It should be ascertained whether Messrs Singh Electric Works carried out works in Dharwar six months prior to this case of malpractice

~~69~~ 49

and which wiremen were engaged to carry out the works.

(3) Without in anyway departing from the time of action indicated in this particular case, there are items which seem to implicate Singh Electric Works in general malpractice.

(a) Singh Electric works are in Hubli.

(b) Both accused are shown on their register, for a period and are working in Dharwar.

(c) They were in possession of printed order forms of Singh Electiric works. It may noted that the license of Singh Electric works is in the name of Surjan Singh B.Suroj.

(d) There is the possibility of Singh Electric works becoming aware of the letter, dated 14-5-1941 from Modern Industrial Works.

(e) As the accused state that they have carried out other such works please enquire the names of contractors who signed Test reports for such works. Was Singh Electric works one of them.

Ex.47 is the report of the Electrical Sub-Inspector, Belgaum on the above points. It was during the course of this inquiry that the letter Ex.91 which I have already referred to was produced by Mr.Pillay before the Electrical Sub-Inspector Belgaum. As the manager of the Modern Industrial Works, Dharwar and the plff's manager at Dharwar was the same individual, it goes without saying that the plff became aware of the letter Ex.19 sent by Mr,Bhat complaining against the unauthorised wiring work done in the Anjuman Buildings . As a matter of fact plff has admitted in his deposition that he had knwoledge of that letter of complaint. It appears that when plff became aware of the sending of the letter Ex.19 by Mr.Bhat before his own chit Ex.66 reached his hands, he thought he would be brought into trouble and so he hastened to write Ex.22 though the same Mr.Bhat two days after later, dissociating himself with the unlicensed work being carried on by Mr.Pillay and his associate . Further the statements made by Mr.Bhat on behalf of the plff in Ex.25 are entirely false and misleading . In paragraph I of the said letter, it is stated that " the two persons mentioned in the said letter do not belong to our regular working stores as Mr.Pilley was in our employment some time ago but was discharged from our service several months back

as can be evidenced from our staff roll ". As a matter of fact both - Pillay and Bajpay were working at Dharwar since the year 1939 on behalf of the plff. The plff has admitted this fact in his deposition. They - have carried out as many as or even more than 100 installation works at - Dharwar ostensibly on behalf of the plff. Paragraph 2 of the letter 'that Mr.Pillay is not authorised by us to accept contracts on our behalf and we accept no responsibility for the contracts signed by him nor for the work carried out by him without our supervision ". This again is false from - beginning to end and the plff himself has falsified it in his deposition. As a matter of fact, plffhad authorised Mr.Pillay to accept contracts in - his name and on his behalf and for that purpose supplied the printed order forms. The allegation in para 3 of Ex.25 that Pillay might have stolen the forms from the office of plff at Hubli and obtained orders from the - consumers thereon, is as equally false. Plff himself used to supply the said forms. It is an admitted fact that the plff has furnished Test reports in all cases of instal lation works carried out by Pillay at Dharwar from the year 1938 onwards. It is as clear as day light that he refused to supply the test report in the case of the last work and undertaken by Pillay on his behalf and carried out by Bajpay for the simple reason that Mr.Bhat had - made a report on 14-5-1941 that the work was unauthorised.

Now, I shall refer to the rules prescribed by the Government of Bombay, under rule 48 of the Indian Electricity rules 1937. They are to be found on pages 406 to 416 of the Local Rules and orders Volume III fifth Edition. Rule 37 reads :- ' The entire staff of every licensed Electrical contractor shall consist of bonafide certificated and full time employees -- Every contractor shall maintain a Register in Form 'I' of all Supervisers, wiremen and apprentices - no person whose name is not entered in such - Register, shall be considered to be a bonafide employee on the contractor's wiring staff " -- The plff has clearly infringed this rule in getting the - work of Electric Installation done by Pillay and Bajpay when they were not - shown or entered in the register of his staff. The rule requires that the - entire staff of the contractor, including supervisers, wiremen and apprentices, shall be entered in the Register and provides that no person whose name is - not entered in such register shall be considered to be a bonafide employee on the contractor's wiring staff, on his own showing, the plff has infringed

77 SP

rule 37.

Rule 40 reads :- ' For all Electric Installation work carried out under rule 48 of the Indian Electricity Rules, 1937, and Test - report shall be submitted by the licensed electric contractor to the - Supply company concerned, The test report shall be signed by the - Supervisor under whose supervision the work has been carried out and - countersigned by the licensed electrical contractor. The Supervisor shall be wholly responsible for the due execution of the electric installation - work and shall be present at the time of the Testing '

Now , in this case the plff held both the supervisor's permit and the contractor's license. Under rule 40, it was his duty to personally - supervise the wiring work carried on by the wiremen Pillay and apprentice Bajapay. His personal presence at the time of Testing is obligatory. It is clear from Ex.91 that plff was not observing rule 40, at least in all - cases of Electric Installations carried out by Pillay. Plff was ordinarily residing at Hubli. Here at Dharwar there was no supervisor in his employmen to supervise the work carried out by Pillay. It is possible that he was present at the time of Testing of some installations as stated by Pillay. It is however clear that he was not and could not be present at the time of Testing of all the installation works at Dharwar. It is an admitted - fact that it is plff who has supplied Test reports of all the installation works carried out at Dharwar by Mr.Pillay. He has therefore broken rule 40 mentioned above.

Plff has also violated rule 29 which requires an Electrical - contractor holding a certificate of competency personally to execute and supervise all work undertaken by him. The plff never personally executed the works taken in his name. His practive was to supply the printed - order forms bearing his name to Pillay who used to canvass and obtain - orders on the order forms supplied by the plff, get the work done either with the materials supplied by the consumers or with the materials - purchased by himself and when the work was finished give Test reports for a price which he used to receive from Pillay. In this arrangement, the real contractor was Pillay and not the plff.

Rule 45 reads :- ' If any person holding a permit and /or an electrical contractor' s license is found guilty of malpractice or -

infringement of these rules, the Electrical Inspector concerned shall - report the fact with his recommendation to the Board. The decision of - the Board on such report shall be communicated to the parties concerned. Note to rule 3 reads :- Any decision given by the Board in the execution of its functions shall be final.

After receiving the report of his subordinates to the querries - made by the Electrical Inspector by his letter Ex.46, he reported the - facts to the Board (Vide Ex.48). The Secretary of the Board circulated the papers to the members of the sub-committee appointed to deal with - cases of malpractice (Vide Ex.49). The two members of the subcommittee recommended that plff was unfit to hold the license. Further the Board considered the question and arrived at the conclusion which has been - communicated to the plff by letter Ex.34 (Vide also Ex.89). That the Board is fully competent to pass the orders it has done, will be clear - from rules 26 and 35 A. Rule 26 reads :- Every permit granted under - these rules shall be liable to be withdrawn or suspended for such period as the Board may ~~xxxxx~~ decide, if the holder thereof is found guilty - of any malpractice under these rules. Rule 35 A reads :- The Board may, at any time cancel a contractor's license if the person (or firm) to whom (or to which) the license is granted is, in the opinion of the - Board, not fit to hold such license.

After he received the communication dated 17th April 1942, Singh (plff) got wild and began to send discourteous letters to the - Board and to the Secretary and Deputy Secretary, P.W.D. Bombay of which Ex.30 is an example. In Ex.37, dated 14th May 1942 we have a soberly and crushing reply sent by the Secretary, licensing Board. It gives the whole case against the plff. It reads :- ' The malpractice committed by you - came to light while making investigation in connection with the - unauthorised~~xx~~ work at New Anjuman Buildings, Dharwar ; the following - facts revealed in the investigation :-

(1') Wireman Pillay had undertaken this work in the belief that you would certify it according to the arrangement mutually agreed upon by - Mr. Pillay and yourself.

2) Wireman Pillay had actually carried out several works in - Dharwar according to this arrangement and had actually obtained Test -

reports from you for obtaining connections to these installations.

(3) Several consumers where installations had been carried out by wireman Pillay and certified by you have admitted that the electric installation works on their premises had been entrusted by the wireman Pillay whom they believed to be a representative of a licensed contractor and that the entire work of installation was actually carried out by - wireman Pillay independently without the direct supervision of any other - person.

As stated in this office letter No. Ex.17/247 dated the 23rd April 1942, there is sufficient documentary evidence to show that you - had agreed to certify the work carried out by wireman Pillay in Dharwar and that you have actually certified works carried out by wireman Pillay in Dharwar without your direct supervision . I agree with every word - of what is stated in the reply of the Secretary of the Licensing Board.

The main grievance of the plff as made out in the plaint is - that the Board passed its orders without framing charges against him - and with-out hearing him in defence and that in so doing it has vilated the principles of natural justice. It is a fact that no formal charges - were framed and serv ed upon the plff and he was called to give his say and defence disprove the charges. To that extent there was defect in - the procedure adopted by the Board. The Board would have done well if it had framed formal charges, heard the plff in his defence on the said - charges and then pas ed its orders. But, at the same time, no particular procedure is laid down by the rules before action is taken under the rules 26 and 35 A . The rulings in 36 Bombay L.R.901 (Ratansi Veeraji V.Maghji Hirji) 37 Bombay L.R.603 (Hazi Abdul Razak V. Hazi Adam) and 40 Bombay L.R.1213 Antia V.Ambolal Sorobhai) relied upon by the plff's pleader do not in my opinion apply to the facts of this case. The first two rulings relate to caste questions and in the last mentioned case the question was about the expulsion of a member from a club. Plff has not proved any - malice or illwill against any member of the Board though he has alleged - want of good faith in the plaint. In my opinion therewas sufficient - material before the members of the Board to arrive at the conclusion that the plff was guilty of malpractice and not fit to hold the superviser's

permit and the contractor's license. Under the note below rule 3, the - decision of the Board is final. The plff has further alleged in the plaint without any basis what-so-ever that the meeting which decided against him - was not legally convened or held. It isnot known what were the ground for - making this allegation. Under section 114 of the Evidence Act, there is a presumption that judicial and official acts have been regularly performed. - The Secretary of the Licensing Board has informed the plff by his letter - dated 28/30 the April 1942 that his case was considered and discussed at the meeting of the Board (Vide Ex.89). There is no reason to suppose that the mas meeting of the Board by which the plff's case was discussed and disposed of was not duly convened or held. On the whole, I am satisfied that the plff has not in any way be prejudiced by the failure of the Licensing Board in not - framing the formal charges against him and hearing him in his defence. The - Board was not bound to follow that procedure under the rules made by the - Government. The plff has, in my my opinion, no case on the merits.

I now consider the question of the Government's liability to pay any damages to the plff even on the basis that the action of the - Licensing Board in cancelling his contractor's license and suspending his superviser's permit was wrongful and therefore actionable. The licensing Board is not an agent of the Government. It is a statutory body created by the rules made by the Government under the Electricity Act. In A.I.R.1939 Madras 663m it has been held that the Secretary of State for India was no. liable for the Torts of his servants employed in the hospital maintained at Government expense. In this case, the famous case of P & O Company V.Secretary of State for India (5 Bombay H.C. reports appendix A) has been fully - considered and distinguished. The learned judges who decided the latter case Sir Balnes Peacock C.J. and Jackson - J ' drew a distinction between acts - done by the Government in the exercise of sovereign powers and acts done by Government in the conduct of undertakings which might be carried on by - private individuals to whom soverign powers had not been delegated. Sir Barnes Peacok said :- There is a great and clear distinction between acts done in - the exercise of what are usually termed sovereign powers and acts done in the conduct of undertakings which might be carried only by private individuals - without having such powers delegated to them . ----- In the former case, the

54

learned Chief Justice and the other judges held that the Secretary of state for India in Council would not be liable for the Torts of its - servants but in the latter case he would '.

In 38 Cal797 justice Fletcher held that the Government were not liable for damages sustained by the plff though coming in contract with a post set up by the Government on a public road on the Calcutta - Maidan. After referring to the P.&.O . case , the learned judge enquires:- " This case is a case to make the Government liable to pay compensation - out of Government Revenues. What for ? For an act which happened to the plff on the public high way. What commercial undertaking or other trading operation were the Government of India carrying on in maintaining the - public path on the public highway ? " In 59 Calcutta 1289 Sir George - Rankin explains the P.&.O case in similar language :- " It was an action i tort and the matter, having come before this court, on a reference from the Small Cause Court, and it being contended that the Secretary of - State for India in Council was not liable . the court decided that there wa a distinction between a business or merchantile concern carried by the - East India Company, whether for its own private or for public benefit and acts done in connection with Governmental power or powers wh ich could not be lawfully exercised save by the sovereign or an individual delagated by the sovereign to exercise such powers

In 37 Madras, it had been held that the Secretary of State for India in Council was not liable for the acts of the District Magistrate - (a Government servant) in the exercise of Statutory authority and not - as an agent of the Government. In 39 Madras 351 it was held that in - maintaining a road , the Government were exercising a function of - Government and that consequently the Secretary of State for Indian in - Council was not liable for damages occasioned to the plff by the careless stacking of gravel on road by the persons engaged to carry out the work of repairs. In 28 Bombay 314, it has been held that the Secretary of State in Council could not be made liable for the negligence of a chief constable i regard to the custody of hay seized by him under statutory authority conferred by the code of Criminal Procedure.

It is clear that applying the principles of the rulings -

mentioned above to the facts of this case. The Government will not be liable to the plff for damages alleged to have been sustained by him by the wtongful action of the Licensing Board. In establishing the - Licensing Boerd, the Government was not undertaking a commercial business business or trading operation. It was simply exercising sovereign authority or Governmental powers.

Now coming to the measure of damages, the plff has given a - purshis at Ex.57 giving up Rs.480/- out of the amount claimed by him in the plaint. Under rule 42 the contractor's license is to be renewed every year. The license which the plff held was to expire on 9th June 1942 (Vide para 6 of the plaint). It was cancelled as from 17th April 1942. There is no law compelling the Board to renew the license every year. The Board could have refused to renew the plff's license when he applied for renewal in June 1942. The plff is at best entitled to claim damages for the period between 17th April 1942 and 9th June 1942 for the cancellation of his - contractor's license. Plff has been allowed to complete the worksds of - installation undertaken by him before the order was passed of which he - had given notice under rule 39 (A) . As the work of Chambanna Malgi was undertaken on the 17th April 1942 (Vide Ex.59) and as no notice was - received before the cancellation of the license, plff was not allowed to do that work. That was a temporary work of providing 101 lights for a - marriage ceremony for two days only. I would put the amount of damages at about Rs.500/- including the damages for the supervision of the supervider's permit for a period of one year. This court has no jurisdiction as the - cause of action arose at Dharwar where the plff was carrying an unauthorised works.

I record my findings as above upon the issues framed and pass the following order.

Order.

Suit dismissed with costs. Plff to pay the deft's costs of suit.

15-1-1945.

Sd/- M.S.Bagali.
First Class Subjudge.

Copied by

" True Copy "

Compared by

Dist. Govt Pleader
Clerk of the Court.

Copy was applied for on the day of January 1945.

Clerk of the Cou

Copy was ready for delivery on the day of January 1945.

Clerk of the Court

Copy was

Clerk of the Court.

DECREE

IN THE COURT OF THE FIRST CLASS SUB-JUDGE,

DHARWAR. EXH. 93.

L.C.CIVIL SUIT NO. 36 of 1943.

PLAINTIFF :- Surjansingh B. Suraj, Sikh, Aged 40, Electrical Contractor and Supervisor, of Hubli.

DEFENDANT :- The Government of Bombay Province, Bombay.

Plaint presented on - 18.11.1942.

Plaint filed on - 11.1.1943.

CLAIM - Rs. 2,355/-.

The plaintiff abovenamed begs to state as under:-

(1) The plaintiff herein has been an Electrical Contractor and Supervisor holding contractor's license and supervisor's permit during the last about ten years since 1932. He has been carrying on Electric Installation Works since then and has his said business in Belgaum, Dharwar and Hubli and occasionally Kanara District. Contractor's -- license, having been originally granted to him as per rules and conditions in regard thereto, was being renewed from year to year as a matter of course and without any hitch whatever. His record all through-out the period of his license and permit as contractor and supervisor has been quite good and un-exceptionable and his business reputation has been all through-out of a high order. He never committed any mal-practice himself nor did he do anything which would offend against any law or rules in connection with the Indian Electricity Act [illegible]

under; he even helped Government by reporting such cases of suspected mal-practice as came to his knowledge directly or otherwise.

(2) On 20th April 1942, however, plaintiff received a communication Exh. 17/199 of 17th April 1942 of the Electrical Department from the Secretary, Licensing Board, Bombay, the relevant portion of which is as follows:-

"On investing a case of mal-practice at Dharwar, it has been found that you (plaintiff) have permitted Mr. Pilley, a wireman, to carry out wiring works on your (plaintiff's) behalf without your (plaintiff's) direct supervision and that you (plaintiff) have ever furnished test reports for such works without carrying out the testing work yourself (plaintiff). The Licensing Board have considered you (plaintiff) as unwrothy of holding a contractor's license on account of your (plaintiff's) mal-practice and have therefore cancelled the contractor's License No. HUBC. 7 granted to you (plaintiff). The Board have also suspended your (plaintiff's) ~~Supervisorx~~ Supervisor's Permit No. B.S. 426 for a period of one year from the date hereof".

(3) The order passed by the Licensing Board cancelling plaintiff's contractor's license and suspending his supervisor's permit has been wholly illegal, unjust, invalid and in-operative. Plaintiff very confidently maintains that he has not been guilty of the mal-practice alleged against him in the said communication and that he has done nothing whatever to justify the Board in considering him unworthy of holding a contractor's license and a supervisor's permit. This cancellation of plaintiff's contractor's license and suspension of his supervisor's permit on the grounds alleged in the said communication have caused him very serious harm entailing heavy pecuniary loss and loss of reputation. The Board has passed the order without giving plaintiff any opportunity of being heard in defence; he was never apprised of any charge of mal-practice against him or any other action on his past amounting to misconduct; he has been condemned to consequences resulting from the said order unheard and without having the opportunity of making the defence. Plaintiff does not admit that the order has been passed in a legally convened and legally held meeting of the Board

and he challenges the legality of the Board's proceedings, if any, from every point of view. Further the rules of even natural -- justice have been wholly ignored and have not been followed; the Board have not given him any notice of the alleged mal-practice, have not given him any opportunity of defending himself and have not acted in good faith. The finding referred to in the said communication has been reached in bad faith without observing the rules of natural justice at the instance of one Mr. Pillay who was reported against by plaintiff's office Manager Mr. A.M.Bhat for a suspected mal-practice as per plaintiff's general instructions to report suspected mal-practices to the Authorities -- concerned. Plaintiff emphatically denies that he ever permitted Mr. Pillay to carry out wiring works on his behalf without his supervision and that he ever furnished test reports without carrying out the testing work himself. Immediately on his -- receipt of the said order on 20th April 1942 and several times thereafter plaintiff made several urgent representations to the Secretary of the Licensing Board, to the Secretary and Deputy Secretary to the Government of Bombay, P.W.D. for withdrawing the said order of cancellation and suspension passed without hearing him but to no avail. He requested them to let him know the evidence alleged to have been recorded against him, to give him an opportunity of making his defence and to re-hear the case against him; these requests were never heeded to and were turned down. All this conduct has been wholly unjustified and deliberately harassing and mala-fide.

4) Plaintiff had undertaken some electric installation works before the cancellation of his license and the suspension of his permit and these works had been half finished when the said order was received. Several urgent representations were made by him to the Board requesting permission to complete the said work and submit test reports in respect thereof; but no relief was given in time and one of the urgent works was completed by others.

(5) Plaintiff has suffered as said above heavy loss in money and reputation and the defendant-Government is legally bound to make good the loss to him; he is further entitled to be maintained

in his rights and to a declaration of the invalidity and illegality of the order of cancellation of his license and suspension of his permit. He has been prevented from undertaking any electric works from the date of cancellation of his license and suspension of his permit and would be so prevented from undertaking works pending the period of the notice and pending this suit for which the notice was given.

(6) Plaintiff's contractor's license, under the rules connected therewith, should have ordinarily expired on 9th June 1942 and an -- application for the renewal thereof with renewal fee should have been made by him to the Licensing Board and the same should have been granted as a matter of course without any hitch as has been done during the past several years. He has always been -- ready and willing to pay the renewal fee and apply for its renewal but he was prevented from doing so as the license itself was unjustly and illegally cancelled.

(7) As a direct and immediate result of the wholly unjustified and illegal conduct on the part of the Government Authorities (defendant) as mentioned above, plaintiff has suffered pecuniary loss and at a modest scale the said loss is as under:-

Rs. 850-0-0	Loss for four months and eleven days ending on 31st August 1942 by reason of loss of work due to cancellation suspension.
Rs. 480-0-0	Loss by reason of payments to his staff their salary for three months.
Rs.2000-0-0	For loss of reputation.
Rs.3330-0-0	

This sum of Rs.3330/- having been his direct and immediate loss, the defendant-Government is in law bound to re-imburse him to that extent and they have to pay him his further loss pending period of the notice and this suit.

Though the real loss of reputation can and should have been assessed at Rs.2000/- the plaintiff for the sake of this suit has assessed it at Rs.700/- only and has given up the balance of Rs.1300/-. To the item of plaintiff's loss of work due to cancellation and -- suspension has to be added a sum of Rs.300/- at the rate of Rs.150/- a month for the months of September and October 1942; hence, the total claim is Rs. 2,330/-.

(8) Plaintiff is under the circumstances being forced to file and therefore files this suit against the defendant-the Government of Bombay Province, for a declaration that the said order of the Licensing Board is wholly illegal, void and in-operative and cancellation of the said order, for recovery of Rs.2330/- (Rupees Two thousand, three hundred and thirty only) as immediate damages, for further damages and for such other reliefs including costs as he may in justice be entitled to.

(9) The cause of action ~~arose~~ for the suit has arisen since the date of the said order of the Licensing Board and has been continuing so long as reliefs mentioned above are not granted.

10) Plaintiff has been a Sikh residential of Hubli aged about 40, his occupation being Electrical Contractor and Supervisor; he has his business in Hubli, Dharwar, Belgaum and Kanara Districts; cause of action for the suit having arisen in all these places and the suit being against the Government, it is filed in this First Class Subjudge's Court, Dharwar which Court has jurisdiction to try it.

(11)-~~Notice of the suit has been given as required by~~ Section 80 of the Civil Procedure Code.

(12) For purposes of Court-fees and jurisdiction, the suit is valued as under:-

Rs. 2330-0-0	For recovery of damages.
Rs. 2330-0-0	Court-fee is paid on Rs. 2335/-.

(13) The plaintiff on the aforesaid grounds among others prays for a decree in his favour and against the defendant declaring the order dated 17th April 1942 mentioned in para two above as being illegal, void and in-operative and therefore cancelling the same and awarding him Rs. 2330/- as past damages and further awarding him future damages and costs from the defendant.

This suit coming on this day for final disposal before Mr. M.S. Bagali, First Class Sub-judge, Dharwar in the presence of Mr. N.R.Koppikar pleader for plaintiff and of Mr. Malapur Government pleader for the deft and it is ordered and decreed that - suit dismissed with costs. Plaintiff to pay the defendant's costs of suit.

Bill of Costs

Bill of Costs

Plaintiff - (Mr. N.R.Koppikar).

1.	Stamp for plaint (Exh. 1).	Rs. 145-0-0
2.	-Do- for power. (Exh. 2).	0-8-0
3.	-Do- for Exhs. (Exhs. 4,6,7,18,39,67).	" 3-6-0
4.	Pleader's fees on Rs. 2335/-.	" 110-0-0
5.	Subsistence for witnesses.	0-0-0
6.	Commissioner's fee.	0-0-0
7.	Copying fee and stamp.	0-0-0
8.	Service of process (Exh. 1).	Rs. 2-8-0
	Total ...	Rs. 261-6-0
	Rejected applications.	" 3-6-0
	Total	Rs. 258-0-0

Defendant (Mr. Malapur).

1.	Stamp for power.	Rs. 0-0-0
2.	-Do. for petitions (Exhs. 9,10,11,12,13,14,15,53 and 54.)	" 5-0-0
3.	Pleader's fee on Rs.2335/-.	"110-0-0
4.	Subsistence for witnesses (Exh. 56).	" 1-8-0
5.	Service of process.	0-0-0
6.	Commissioner's fee.	0-0-0
7.	Copying fee and stamp.	0-0-0
	Total	Rs.116-8-0
	Rejected applications.	" 5-0-0
	Total ...	Rs.111-8-0

Given under my hand and seal of this Court this 15th day of January 1945.

Sd/ B.V.Gadad,
Kurkuns Clerk.

Sd/ M.S.Bagali,
First Class Sub-judge.
20.1.45.

Plaintiff's pleader:- Sd/ N.R.Koppikar. (Seal)
Defendant's pleader:- Sd/ S.R.Malapur, Assistant Govt. pleader.

Typed by Compared by "True Copy"

S R Malapur
Asst. Govt. Pleader
Clerk of the Courts

Suits:
Dharwar.
For a declaration that Rs.2,33[illegible] should be awarded as last [illegible] and further future damages should be given. The order of 17th [illegible] 1943 by the Licensing Board [illegible] ing Licence No. Hub.37 and suspending permit No. B.G. 486 [illegible] illegal, void and inoperative.

GOVERNMENT OF BOMBAY.

Legal Department.

Resolution No. 167

Bombay Castle, 2nd March February 1945

Read Government Resolution, Legal Department, No. 9208-A dated the 15th December 1943.

Letter from the District Government Pleader, Dharwar, No. 105, dated the 14th February 1945, stating that the suit noted in the margin was decided by the First Class Sub-Judge, Dharwar, on the 10th January 1945, when the following order was passed:-

In the Court of the First Class Sub-Judge, Dharwar. Civil Suit No. 36 of 1943.

Surajsingh B. Suraj .. . Plaintiff;
versus
The Government of Bombay .. .. Defendant.

Claim - Rs. 2,330.

" Suit dismissed with costs. Plaintiff to pay the deft's costs of suit," and forwarding uncertified copies of the judgment and decree.

RESOLUTION. - The result of the suit is recorded.

By order of the Governor of Bombay,

for { P.N.Moos. Secretary to Government.

To

The Public Works Department.
The Commissioner, S. D.
The Collector of Dharwar.

Issued 2/3.

original

Submitted for approval and signature.

MVT 1/3.

P.A. 1/3

A.S.

Submitted after issue

2 File in S. Dist. 1/44.

Mot

3/3.

3-73-

No. 252 /Th
Dharwar 26 April 1945.

To

The Remembrancer of Legal Affairs,

Bombay.

Subject:-Sanction of defence to Civil Appeal No.64 of 1945 filed by against the decision in L.C.Suit No.36 of 1943 of F.C.Court, Dharwar.

Sir,

I have the honour to report in accordance with rule 83 of the Law Officers Rules, that the plaintiff Surajsingh B. Suraj of Hubli has filed an appeal (C.A.No.64 of 1945) to the District Court against the decision of the First Class Sub-Judge, Dharwar, passed on 15-1-1945 in L.C.Suit No.36 of 1943, in favour of Government. I would, therefore, request you to kindly move Government to accord sanction to the defence of the above appeal on the lines mentioned in G.R.L.D.No. 9202-A dated 15th Dec 1943 as also on the favourable grounds contained in the judgment of the learned F.C.Sub-Judge, Dharwar.

The copy of notice served on the Government Pleader in

respect of this appeal on 23-3-1945, as also the copy of appeal memo and the uncertified copy of judgment relating to L.C.Suit No.36 of 1943 have been enclosed herewith for favour of perusal.

Your obedient servant,

S R [illegible]

for District Government Pleader.

Respectfully submitted through the Collector of Dharwar, with a request to kindly move Government to accord sanction to the defence of the above appeal.

S R [illegible]

for District Government Pleader.

No.L.A.W.410

Dharwar, 12-5-1945.

Submitted to the Commissioner, S.D.Belgaum.

[illegible]

Collector of Dharwar.

[illegible]

33

29/5

23-3-45.

. దొరబాబు పెద్దిరాజు వళ్ళ శోభిం నళ్లి. 67 CA. 64/45 కృ.

నా నుర భవ నిం న వి. నుర్రాళ్ళ నాగ రుబ్బమ్మ. } Appellant
1-4 రు.

ని.

గా గవ్వ నేర్ మండు వీలో భో. చా బ్రాచ్ నళ్ల } Respondents.

నీర కొర వళ్లు ద్రొరబాబు గా వారకు

నుర భవ నిం న. వి. నుర్రాళ్ల రుబ్బమ్మ గారు ద్రొరబాబు గారిని

నీ వ. శోభనం ఉంది 3 సార్లు కాపురం చేసి ఇద్దరు

చనిపోయిరి గాని ఇంకా ఇద్దరు గర్భ-కి-కాగా సాలుచున్నది

వీరి: వాళ్ళు వీళ్లు: ఉన్న వళ్లు ర చము మం లు వ్రా వి

ಹಾಗೂ ಅಕ್ಷರಗಳು :- ಪ್ರಾಪ್ತಿಯಾಗಿ ಎಸ್.ಟಿಯಿಂದ ಬಂದಿರುವ ಮೂಲ
ಲಾಕ್ಷಣಿಕರು.

ತಮ್ಮ ವಿಶ್ವಾಸಿಕ ಸೇವೆಯಲ್ಲಿ

ಗುಲ್ಬರ್ಗಾ 27-3-87

Clerk of the Court

Red Xerox copy ಅನ್ನು
ಪಡೆದಿದೆ

89 C 8

Civil Appeal No.64/1945.

In the Court of the District Judge,

at Dharwar

Appellant:-Surajsing B.Suraj, Sikh, aged 42, Electrical contractor and supervisor, Hubli.

Vs.

Respondent:-The Government of Bombay Province, Bombay.

Claim Rs.500/-

The appellant above named having been aggrieved by the judgment and decree in L.C.Suit No.36 of 1943 passed by the F.C. Sub-Judge's court, Dharwar, on 15-1-1945 begs to file this appeal against the same on the following among other grounds viz.:-

1. The judgment and decree of the lower court are contrary to law equity and evidence.

2. The plff's suit ought to have been allowed and the lower court erred in dismissing it.

3. The issue framed by the lower court having been correct, it erred in allowing the the deft to go beyond the issues and lead evidence on the points of the alleged actual commission of mal-practice by the plff. Actual practice of mal-practice was not the point in isue at all.

5. The lower court's procedure has been wholly illegal and unjust and has resulted in serious miscarriage of justice.

6. The plff had no opportunity whatever in the lower court to meet the deft's allegation of malpractice and their evidence on the point.

7. The lower court has not justified in law in going into the alleged actual commission of malpractice and giving any finding on it. It has gone beyond its jurisdiction.

8. Evidence which the deft did not want and did not call for was not produced by the lower court in the course of court examination of the defts' only witness Pilley. All this was fresh evidence after the plff closed his case and the plff had no opportu-nity to meet it.

9. The lower court was right in answering issue No.1 in the affirmative; but the second part of the finding was not in to any issue framed by the lower court and was arrived at

unjustly, and illegally without the plff having an opportunity to lead evidence thereon.

10. The lower court wrongly held that the plff ~~m~~ knew the facts constituting the malpractice and that he was aware of the inquiry made by the P.W.D. officers, Electrical Branch.

11. The lower court ought to have held that the cancella-tion of the plff's contractor's license and suspension of his supervisor's permit by the board was unlawful, ultra vires and void.

12. It should have held that the meeting of the board in which plff's license was cancelled and the supervisor's permit was suspended was not legally convened or held.

13. It should have held that the Board failed to observe the principles of natural justice in cancelling his license & suspending his permit.

14. It wrongly held that the plff knew the charges against him and that he was conscious of his own guilt. It gave his - finding without any issue.

15. It erred in holding that the board was statutory body and the deft was not liable for the wrongful action of the Board.

16. The lower court did not properly understand the law on the point and the rulings quoted have been misapplied.

17. Pilley was wrongly believed and plff has been wrongly disbelieved.

18. The Electrical Sub-Inspector though present in court was not examined by the deft in the case; the lower court should have drawn an inference adverse to the deft.

19. Some documents have been wrongly admitted in evidence and some others which are not public documents have been exhibited without their being properly proved.

20. Wrong inferences have been drawn on the aforesaid grounds amongst others, the appellant respectfully prays that the appeal be allowed and the suit be decreed with costs through out.

The damage of Rs.500/- held to have been proved by the lower court have been accepted for the purposes of this appeal, for court-fees and jurisdiction and the stamp is paid thereon.

Drafted and presented by
N.R.Koppikar.
Pleader.

21-2-1945.

Below Collector of Dharwar's endorsement No. LA
410 dated 12th May 1945.

No. L.S.T.-340.
Office of the Commissioner S.D.
Belgaum, 5th June 1945.

Submitted and recommended.

Commissioner S.D.

H..

4968
A 12345

4708
12-6-45

Submitted with pp. (S.-Draw. 1/44)

Draw
136

A. P. A.

11/23

The unsuccessful plaintiff in Chandra Civil Suit No. 36 of 1943 has filed an appeal. The facts will be found in Mr. Sundeshwari's notes at p. 21 and the C.A.V. at p. 33 of the File. The grounds of appeal are covered by the heads and the trial Court's Judgment. No further instructions appear necessary. Sanction may be accorded to the defence of the appeal.

RM
21/6

A.A.L.A. 22/6.
R.L.A

Pleader 22/6/43

75 H

A Suits:
Dharwar.
For a declaration that Rs.2,330 should be awarded as past damages and further future damages should be given. The order of 17th April 1942 by the Licensing Board cancelling Licence No.Hub.C7 and suspending permit No.B.G.426 is illegal, void and inoperative.

A

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 4893

Bombay Castle, 30th June 1945

Read Government Resolution, Legal Department No.1677, dated the 2nd March 1945.

Letter from the Collector of Dharwar No.L.A.W.410 dated the 12th May 1945 - forwarding a copy of the letter from the District Government Pleader, Dharwar, No.252 dated the 26th April 1945 and stating that the plaintiff in the suit noted in the margin has now preferred an appeal No.64 of 1945 in the Court of the District Judge, Dharwar, against the decision of the First Class Sub-Judge, Dharwar, dated the 15th January 1945 and requesting sanction to its defence.

B In the Court of the First Class Sub-Judge, Dharwar.
Civil Suit No.36 of 1943.
Surajsingh B. Suraj. ... ... Plaintiff;
versus
The Government of Bombay... ... Defendant.
Claim - Rs.2,330. B

Endorsement by the Commissioner, Southern Division, No.L.S.T.-340 dated the 5th June 1945 - forwarding the above with his concurrence.

RESOLUTION. Sanction is accorded to the defence of Civil Appeal No.64 of 1945 in the Court of the District Judge, Dharwar on the lines of the brief accompanying the Government Resolution, Legal Department No.9202-A, dated the 15th December 1943 and the favourable grounds contained in the Judgment of the First Class Sub-Judge, Dharwar, dated the 15th January 1945.

By order of the Governor of Bombay,

O/c TK
For { P.N.MOOS,
Secretary to Government.

To
The Public Works Department.
The Commissioner, Southern Division.
The Collector of Dharwar.
The District Government Pleader, Dharwar.

Issued on 8-30/6.

Submitted for signature.
28/6.

V/28/6

Submitted after date.
File with PPs. in S. DWR 1/44.
KP 2/7

P.A 7/7

Office of the
Dist. Government pleader, Dharwar.
1st May 1946. No. 804

To
The Collector, Dharwar,
Dharwar.

Subject: Filing of appeal to the High Court in the decision in District Court appeal No. 64 of 1945 in L.C. suit No. 36 of 1942 of F.C.S.J's Court, Dharwar.

Plff : Surajsing B. Suraj.
Vs.
Deft: The Government of Bombay.

Ref: G.R.L.D. 4893 dated 30-6-1945
9202A " 15-12-1943

Sir,

(1). I have the honour to submit that on 30th March 1946 the Assistant Judge Dharwar has passed the following order in Appeal No. 64 of 1945:

" Appeal is partially allowed. Decree passed by the Lower Court dismissing the plaintiff's suit for declaration is partially reversed and the following declaration is made". " It is hereby declared that the order dated 17-4-1942 passed by the Licensing Electric Department P.W.D. by cancelling the plff's contractor's licence No. Hub.C. 7, and supervisor's permit No. B s 426 for a period of one year is illegal. The decree passed by the Lower Court dismissing the plaintiff's suit for damages is confirmed and the appeal to that extent is dismissed. As the success is divided, there will be no order as to costs of the parties in the Lower Court and appeal " Therefore the decision of the appellate Court is partially adverse to Government.

2. The question for consideration is whether an appeal to the High Court should be filed.

3. The Court of first instance decided the suit in favour of Government. But the learned Assistant Judge finds that the licensing board acted illegally in passing the order of cancellation of plaintiff's contractor's licence and suspension of supervisor's permit without hearing the plff in his defence and thus acted contrary to the principles of natural justice. The learned Judge says that the Rule 3 (b) of the Electricity Rules empowers the board to hear and decide cases of malpractice . Though the rules do not specifically lay down that a notice of the charge of m lpractice should be given

to the plaintiff, the learned Judge says that plaintiff must be heard. Relying upon 40 Bom.L.R. page 1213, he gave the above decision. It maxxkexxoxx

It may be observed that the Court of First instance found on the documentary evidence Ex. 66 and 91 and the oral evidence of the witness Pilley examined by him that the plff was as a matter of fact guilty of malpractice. The Appellate Court does not say that this finding is incorrect, but says that the order of the board is ill gal as no opportunity was given toplff. The appellate Court admits that a regular trial is unnecessary and the Electricity rules do not lay down any particular procedure. He also admits that the Court cannot sit in Judgment upon the decision of the Board. The Court of first instance has held that as the plaintiff knew of the charges against him and as he was conscious of his guilt, the uestion whether the board acted contrary to the principles of natural justice did not survive for consideration.

4. It appears to me that the case involves an important question of law and is a fit one for appeal.

5. I would respectfully submit that the Government may kindly be moved to prefer an appeal to the High Court in respect of the claim allowed by the Assistant Judge. The appeal to the High Court requires to be filed within 90 days from the date of the decision of the Lower Appellate Court.

Certified copies of Judgement & decree are attached hereto.

Your most obedient servant.

B.B. Dawnark

District Covernment pleader.

9—121

Copy was applied for in person on (11th) Eleventh April 1946.

Record Keeper.

5380
Copy 10-2-0
Copy. 2-9-0
P. 0-2-0
12-13-0

Copy was ready for delivery on 23rd April 1946
Twenty third

Record Keeper.

Copy was delivered on 25th April 1946
Twenty fifth

Record Keeper.

Received on - 21-2-1945.

Registered on - 3-3-1945.

Decided on - 30-3-1946.

Duration - One year and 27 days.

In the Court of the Assistant Judge, Dharwar,

At Dharwar.

Ex. 9.

Appeal No. 64 of 1945 from Decree in Civil Suit No. 36 of 1943 of the Court of the Civil Judge Senior Division of Dharwar (Mr.M.S.Bagali).

Pleaders.

Mr. N.R.Koppikar. Surjarsingh B. Suraj, Electrical Contractor and Supervisor of Hubli. . Appellant. (Original Plff).

against

R.B. B.S.Sawkar. The Government of Bombay Province. -- Respondent. (Original Defendant).

Claim --Rs. 500/-.

Judgment.

This appeal arises out of a suit brought by the plaintiff appellant against the Provincial Government to obtain a -- declaration that an order dated 17-4-1942 made by the -- Licensing Board, Electrical Department, P.W.D. Bombay, by which plaintiff's Electric contractor's license was cancelled and his supervisor's permit was suspended for one year, was illegal and ultra vires of the Board and to recover a sum of Rs.2300 as damages for the loss of reputation and business.

2. The undisputed facts of the case may be briefly stated

with advantage. Plaintiff held an electric contractor's license and a supervisor's permit. He had his business office at Hubli. In the year 1941 he opened a branch at Dharwar and appointed one Mr.Bhat as manager of that branch. Mr. Bhat learnt that in one of the rooms of the building called New Anjuman building electric installation work was being carried out by unauthorized persons. On 14-5-41 he gave information about the same to the Electrical Sub -- Inspector Belgaum. He stated that such authorized persons might get test reports from some unscrupulous contractors (Ex.19). In order that the complaint might not be hushed up, Mr.Bhat gave similar information on 17-5-1941 to the Electrical Inspector, Poona, as the manager of plaintiff's branch office at Dharwar (Ex.22). Mr. Bhat was asked by the Assistant Electrical Inspector, Poona, to disclose names of the persons who carried out unauthorized work (Ex.20). Mr.Bhat replied on 21-5-41 that he had learnt that one Pillay and one apprentice working under him had carried out the work (Ex.21). The object of making this report was apparent. Mr. Bhat wanted to get that business as the plaintiff's branch was newly opened at Dharwar. Mr. Bhat accordingly got an order for rewiring from the owner of the building. He therefore sought permission from the Electrical Inspector Poona to do the work (Ex.23) but it was not granted (Ex.24). The Electrical Inspector Poona wanted the owner of the building to state the names of the persons who carried out the work unauthorizedly. Mr. Bhat accordingly got a letter from the owner of the building containing necessary information (Ex. 32) and communicated it to the Electrical Inspector Poona. He explained that Pillay was discharged from plaintiff's employment some months back and he was not authorized to accept contracts on plaintiff's behalf. It was necessary to give this explanation as in Ex.32 it was stated that Pillay got the contract from the owner of the building posing that he represented the plaintiff's -- concern at Dharwar. Pillay had made use of the printed forms of the plaintiff's business concern. Hence it was explained that Pillay got those forms when he was in plaintiff's employment. In short Mr. Bhat entirely disowned the fact of contract having been taken on behalf of the plaintiff (Ex.25). Yet Mr.Bhat's -

request for rewiring was not granted (Ex. 26). On 20-6-41 a report was called for from the Electrical Sub Inspector Belgaum. By this time, Pillay and the apprentice Bajpay working under him and had addressed a letter dated 2-6-41 to the Electrical Sub Inspector Belgaum in which they gave their explanation in the matter. The explanation was that plaintiff had accepted the contract and had asked one of them to carry on the work but plaintiff refused to give test report as he learnt from Bhat that the matter was reported to the Government (Ex.50). The P.S.I. Belgaum sent a report to the Assistant Electrical Inspector Poona with Ex.50 and an extract from a register of employees maintained by the plaintiff (Ex.27) and other papers (Ex.44). The Assistant Electrical Inspector, Poona submitted his report dated 4-7-41 to the Electrical Inspector Bombay recommending that Pillay and his apprentice be prosecuted as they had misguided the contractors and the building owner by making use of the printed forms of the plaintiff's business concern (Ex. 33). The Electrical Inspector Bombay was of opinion that Wessta Singh Electrical works were concerned in this malpractice. He therefore called for further information (Ex.46). It appears that Pillay produced before the Electrical Sub Inspector Belgaum a letter dated 26-4-39 purporting to have been written to him by the plaintiff. From this letter it appeared that Pillay and Bajpay were working under the plaintiff's patronage and the plaintiff used to furnish test report for the work done by them (Ex.91). From Ex.91 it further appears that though plaintiff was not present either at Dharwar or at Hubli the test reports were furnished by him in the usual course. The Sub Inspector reported on 2-8-41 that Pillay and Bajpay were not informed by the plaintiff that their service was dispensed with. He further reported that plaintiff had signed the test report of all the work carried out by Pillay and Bajpay (Ex.47). The Electrical Inspector Bombay then asked for a true copy of the register of employees maintained by the plaintiff to be attested by him (Ex.41). This was duly complied with (Ex.42). On 4-10-41,

C. O. C.

the Electrical Inspector Bombay submitted a report to the Secretary, Licensing Board, Bombay, in the matter recommending that action be taken against the plaintiff for breach of rule 48 of the Indian Electricity Rules 1937. The Sub-committee of the Licensing Board gave its opinion in the matter (Ex.49). Then the Licensing Board passed the order mentioned in para one above (Ex.34). Plaintiff moved the government in the matter but it was of no avail (Ex.35). Further correspondence between the Board and the plaintiff seems to have ensued (Exs.36 and 37). Finally the suit was filed on 18-11-1942.

3. Plaintiff's case as alleged in the plaint was that he had not violated any provisions of the Electricity Act or any rule made thereunder. He complained that the Board did not hear him and allow him to make his defence. He denies the charges of mal-practice against him mentioned in Ex.34. He contended that the Board did not observe principles of nature justice before taking action against him. Defence was that the Government were not liable for damages claimed; the order passed was legal and intra vires of the Board; plaintiff was guilty of mal-practice attributed to him; plaintiff was informed of the allegations against him and that the Board had not acted maliciously.

4. On these pleadings issues were sought at Ex.38 in the lower Court. Plaintiff's contention was that he was not informed by the Board of the charges against him and was not given an opportunity to defend himself. In defendant's written statement it was contended that plaintiff had been appraised at an early stage of wireman - Pillay's statements which implied malpractice on plaintiff's part and plaintiff had opportunity of which he availed himself of - explaining himself and adducing evidence". This averment is not borne out by the documentary evidence referred to in para 2 above in chronological order. Ex. 37 shows to the contrary. The lower Court therefore held on issue No,1 that the Board had not informed the plaintiff of the charges against him and did not give him an - opportunity to defend himself. The lower Court however held that plaintiff was aware of the facts constituting the malpractice and of the inquiry made by the P. W. I. Officers Electrical Branch. -

What the lower Court meant was that the plaintiff though aware of the inquiry going on did not offer to defend himself. The lower Court held it not proved that the action taken by the Board was illegal. Plaintiff had alleged that the meeting of the Board in which it was decided that action should be taken against him was not legally convened. The lower Court held that this allegation was not proved. Another contention of the plaintiff was that the Board had not observed the principles of natural justice in ordering cancellation of his license. The lower Court held that as plaintiff knew of the charges against him and as he was conscious of his guilt, this question did not survive for consideration. It follows that the question of damages did not survive for consideration. The lower Court held that the defendant was not liable in damages for the action taken by the Board. The suit was accordingly dismissed.

5. In appeal, the learned Government pleader did not dispute the finding recorded by the lower Court on the principal contention of the appellant that the Licensing Board did not inform him of the mal-practices with which he was charged and did not give him any opportunity to defend himself. From the documentary evidence referred to chronologically in para 2 above the finding recorded by the lower Court becomes evident. But the lower Court as part of the finding on this principal contention of the appellant found that the plaintiff knew the facts constituting the malpractice and he was aware of the inquiry made by the P. W. D. Officers Electrical Branch. Assuming that the finding recorded by the lower Court is correct, it does not follow that thereby the necessity to inform the plaintiff of the charges against him and hearing him in his defence is dispended with if according to law or according to the principles of natural justice it was incumbent on the Board to have done so. Under rule 48 of the Indian Electricity Rules 1937, an electric installation work could only be carried out by an electrical contractor licensed by the Provincial Government and under the direct supervision of a person holding a certificate of competency issued by the Provincial Government.

C. O. C.

Accordingly rules and conditions were prescribed for issuing certificates of competency and licenses mentioned in the said rule. - These rules and conditions provide for appointment of a Licensing Board, its constitution and its functions. The Licensing Board was authorized to grant electric contractor's license and to grant - certificates to supervisors. It was also the function of the Board to hear and decide cases of malpractice by electric contractors, supervisors and wiremen. Rule 45 provided that "If any person holding a permit and/or an electrical contractor's license is found guilty of malpractice or infringement of gules the electrical Inspector concerned shall report the fact with his recommendation to the Board. The decision of the Board on such report be communicated to the - parties concerned". Rule No. 35A provides that the Board may at any time cancel a contractor's license if the person to whom the license is granted is in the opinion of the Board unfit to hold the same. Rule No.26, provides that every permit granted under these rules shall be liable to be withdrawn or suspended for such period as the Board may decide if the holder thereof is found guilty of any malpractice under these rules. Thus the procedure is that the Electrical Inspector reports cases of malpractices or infringment of rules by persons - holding supervisors' permits or /and electrical contractors' licenses and the Board makes decision on the reports so submitted. So far as the electrical contractors' license is concerned, it is not necessary for the Licensing Board to find that a holder thereof is guilty of malpractice or infringement of rules. Reason is that under rule 29 it is not the absolute right of a person complying with the requirements of the rules to get a contractor's license. The Board may refuse to grant such license to any person who in the opinion of the Board is not fit to hold such license. Even after contractor's license is granted, it may be cancelled at any time if the holder thereof is in the opinion of the Board unfit to hold such license. Hence the Board may hear and decide cases of malpractices by -- persons holding electrical contractor's license but the action is to be taken under rule 35 A. But in the case of a person holding a -- supervisor's permit, the Board must decide that the holder thereof is found guilty of any malpractice under the rules. Reason is that under rule 23. it is the right of every person who has passed the exa-

examination of supervisor to get a certificate of competency and a permit. The Board has no option left in the matter. Hence for a withdrawal of suspension of permit, the - holder thereof must be found guilty of any malpractice under the rules. In order that the Board might find a person -- holding supervisor's permit guilty of any malpractice under the rules it is necessary that the Board should hear and - decide such cases as provided in rule 6. The question is what is meant by the expression "hear and decide". This expressio means hearing the parties concerned and giving a decision on the matter before the Board. It implies that each party -- should have sufficient opportunity to make submissions with respect to the matter to be decided and to adduce evidence if necessary in support of its submissions. The term "malpractice" signifies that a person charged with it is accused of having committed a quasi-criminal offence. Hence before a decision is taken against him he should have opportunity to make his submissions. The procedure of hearing such cases may not be thorough like the procedure adopted in courts. But the - person who is to be damned must have an opportunity to make his defence.

6. The defence set up in defendant's written statement - is that the contractor's license and supervisor's permit were granted in the discretion of the Licensing Board ~~and the~~ - Board and the Board has power to cancel the same. This is - not an entirely correct statement of law as laid down in the rules prescribed. Provided a candidate passed the examination prescribed, he is entitled as a matter of right to get a - certificate of competency and permit to supervise. Similarly provided the requirements of rule 29 are complied with a - person is entitled to get contractor's license. The only - discretion given to the Board is to refuse to grant contractor's license to a person who in the opinion of the Board is not fit to hold such license. It follows that when a person is granted contractor's license he is found fit to hold the

C. O. C.

license at the time of its issue. A decision that he subsequently became unfit must be taken after hearing that person as it affects his business reputation. Hence in rule 3 it is provided as one of the functions of the Board to hear and decide cases of malpractices by electrical contractors. As regards withdrawal or suspension of permit it is definitely provided that the holder thereof should be found guilty of any malpractice under the rules. The term "guilty" implies misconduct. It is the principle of natural justice that a man should be heard before misconduct is attributed to him. A Licensing Board is a creature of statute. It is bound by the rules under which it came into existence. A club is not a creature of statute. Still it is held that before a member could be expelled from a club he must have full opportunity of being heard. This is based on the principle of natural justice. Vide Ambalal Sarabhai v. Phiroz H. Antia (40 Bom. L. R. 1213). Similar principles were laid down in cases where members of a caste were expelled from that caste. Ratansey Virji v. Meghji Hirji (36 Bom. L. R. 901), Haji Abdul Razak Haji Haji Adam Haji Usman (37 Bom. L. R. 603). Caste and club are not creatures of statute. It therefore appears that the Board acted illegally in passing the order referred to above without hearing the plaintiff in his defence.

7. In defendant's written statement it was contended that - plaintiff had been appraised at an early stage of wireman Pillay's statement which implied malpractice on his part and had an opportunity of which he availed himself of explaining himself and adducing evidence. This is not correct. The only evidence led is that plaintiff knew about the inquiry against the - - wireman (Ex.68). The Electrical Sub Inspector Belgaum was not examined to say that he informed the plaintiff of the statement made by Pillay. There is nothing to show that before the order was passed plaintiff availed himself of the "opportunity" to explain himself and to adduce evidence. The letter from the - Secretary Licensing Board dated 14-5-42 (Ex.37) shows that plff was not given any such opportunity. It was stated in that - letter that "I can assure you that nothing which is not supported by facts has been considered by the Licensing Board who have -

857-17.

taken every fact into consideration before giving their - decision". So on the question of fact the finding recorded by the lower Court on issue No.1 cannot be disputed. It was further stated in defendant's written statement that the - Board was not required to hold a formal trial and the procedure adopted by it was sufficient compliance with the - principles of natural justice. Of course formality of a trial was unnecessary. But it is not correct to say that the -- procedure adopted by the Board was a sufficient compliance with the principles of natural justice. Issue No.4 raised in the lower Court was whether the Board had failed to observe the principles of natural justice in cancelling the plaintiff's license and permit. In the opinion of the lower Court this issue did not survive as plaintiff knew the charges - against him and he was conscious of his own guilt. The - lower Court preferred to accept the evidence of Pillay in - preference to plaintiff's evidence. It will be seen that Pillay was on his own admission an accomplice. In the absence of corroboration his evidence could not have been accepted. No explanation was forthcoming why the P.S.I. who inquired into the matter was not examined to say that plaintiff was - informed of the charges against him. The documentary evidence referred to above shows that in the beginning plaintiff was not accused of any malpractice on his part. There is therefore no reason to believe that plaintiff was aware of the - charges against him. Further the lower Court held that plff was conscious of his own guilt. The lower Court therefore - agreed with the Board in holding that plaintiff was guilty. It is not for the Court to come to any such conclusion. In Ambalal Sarabhai v. Phiroz M. Antia (40 Bom. L.R. 1213) it was observed that the important question in all cases - when an institution had purported to act within its powers was whether there had been due inquiry. This observation - applies with greater force to the facts of the present case. There was considerable discussion before me on the question whether on the evidence led plaintiff could have been held -

guilty of malpractice. In my opinion this is entirely besides the point. Reason is that the court coming to a conclusion one way or other will not affect the merits of the case. Plaintiff cannot by satisfying the Court that he was not guilty improve his position. Defendant cannot by showing to the contrary make amends for any - defect in the Board not observing the principles of natural -- justice. It is therefore futile to enter into a detailed discussion of the question whether the plaintiff was guilty of malpractice in canvassing contract work through the two men and submitting test report without supervising the work or carrying out test work - (Ex.34). The lower Court based its conclusion against the plaintiff on the evidence of two wiremen who were accomplices and on two documents one of which was ambiguous(Ex.66) and other was - suspicious (Ex.91). The lower Court found plaintiff guilty of having infringed rules Nos.37,40 and 29. But there is no -- reference to infringement of rule No.37 in the charge implied from the order (Ex.34). As regards the charges under rules 40 and 29 defendant relied on the evidence of the wiremen and the -- documents referred to above. It is not necessary for me to say that the lower Court's conclusion is correct. The court had not to sit in judgment over the decision of the Board. The court had only to see whether the order was illegal on the ground that plaintiff had no opportunity to defend himself. The lower Court conceded necessity on the part of the Board of framing specific charges and of hearing the plaintiff in his defence. It was - observed that there was no particular procedure laid down by the Board before action is taken under rules 23 and 35 A where there is no specific procedure prescribed the most elementary procedure which must comply with the provisions in rule 3 sub-clause(b) "hear and decide" must be followed. The cases referred to in the - judgment of the lower Court though not directly applicable to - the facts of the present case, emphasise necessity of observing principles of natural justice and as such apply with greater - force to statutory bodies like the licensing Board. The lower - Court observed that there was sufficient material before the Board to arrive at the conclusion that the plaintiff was guilty of -- malpractice etc. The court cannot consider whether there was

13 89 88 13/ 15

sufficient material before the Board to arrive at that -- conclusion as the Court cannot sit in judgment on the decision of the Board. The court by coming to that conclusion - cannot remedy the defect is not observing the principles of natural justice. Even as regards contractor's license once it is granted, it is a serious thing to conclude that such a - person is unfit to hold such a license. Hence the necessity of hearing and deciding as provided in rule 3 clause (b) -- becomes apparent, even when action is to be taken under rule 75 A. I must therefore hold following the principle laid down in Ambalal Sarabhai v. Phiroz N. Antia (40 Bom. L. R. 1213) that the order passed by the Board was illegal. Plaintiff is entitled to a declaration accordingly.

8. There was another contention raised that the meeting of the Board which passed the order aforesaid was not legally convened as there was no requisite quorum laid down in rule 5. No such contention was raised in the plaint. The minute book of the proceedings of the Board dated 17-4-1942 was not - called to support that allegation. Hence this contention - can not be accepted.

As regards the claim for damages it is apparently untenable. The Board was a statutory body exercising quasi-judicial authority. The government cannot be held liable for damages resulting from an action taken by such a statutory - Board in the exercise of quasi-judicial authority. The general principle is ~~not~~ that government as employee is not responsible for the acts of omission on the part of its servants. The - Board is a creature of statute. The Board could not have been held liable in the absence of an allegation of malice. It - follows that government could not be held liable for any - action taken by the Board in the exercise of its quasi-judicial authority without complying with the principles of natural - justice.

9. Result is that the claim for declaration must be -- decreed but the claim for damages must be dismissed. The - decree passed by the lower Court must therefore be varied and a proper decree will be passed. Hence the following order

C. C. C.

is passed.

Order.

Appeal is partially allowed. Decree passed by the lower Court dismissing the plaintiff's suit for declaration is partially reversed and the following declaration is made.

It is declared that the order dated 17-4-1942 passed by the Licensing Board, Electrical Department, B.W.D. Bombay, cancelling the plaintiff's contractor's license No. Mub 0.7 and supervisor's permit No. M.C. 426 for a period of one year, is illegal. The decree passed by the lower Court dismissing the plaintiff's suit for damages is confirmed and the appeal to that extent is dismissed. As the success is divided, there will be no order as to costs of the parties in the lower Court and in appeal.

30th March 1946.

sd. M. C. Vakil.

Assistant Judge.

- - - - - - - - - - - - - - - -

Grounds of appeal.

1. The judgment and decree of the lower Court are contrary to law, equity and evidence.

2. The plaintiffs' suit ought to have been allowed and the lower Court erred in dismissing it.

3. The issues framed by the lower Court having been correct it erred in allowing the defendant to go beyond the issues and lead evidence on the points of the alleged actual commission of mal-practice by the plaintiff. Actual commission of mal-practice was not the point in issue at all.

4. The plaintiff gave during the trial, an application protesting against its procedure, but the same was wrongly disallowed.

5. The lower Court's procedure has been wholly illegal and illegal and unjust and has resulted in serious miscarriage of justice.

6. The plaintiff had no opportunity whatever in the lower Court to meet the defendant's allegation of mal-practice and their evidence on the point.

7. The lower Court was not justified in law in going into the alleged actual commission of malpractice and giving any finding on it. It has gone beyond its jurisdiction.

8. Evidence which the defendant did not want and did not call for was got produced by the lower Court in the course of Court examination of the defendants' only witness Pillay. All this was fresh evidence after the plaintiff closed his case and plaintiff had no opportunity to meet it.

9. The lower Court was right in answering issue No.1 in the affirmative; but the 2nd part of the finding was not in answer to any issue framed by the lower Court and was -- arrived at unjustly, and illegally without the plaintiff having an opportunity to lead evidence thereon.

10. The lower Court wrongly held that the plaintiff knew the facts constituting the malpractice and that he was aware of the enquiry made by P. W. D. officers, Electrical branch.

11. The lower Court ought to have held that the cancellation of the plaintiff's contractor's License and suspension of his Supervisior's Permit by the Board as unlawful, ultra vires and void.

12. It should have held that the meeting the Board in which plaintiff's license was cancelled and Supervisor's permit was suspended was not legally convened or held.

13. It should have held that the board failed to observe the principles of natural justice in cancelling his license and suspending his permit.

14. It wrongly held that the plaintiff knew the charges against him and that he was conscious of his own guilt. It gave this finding without any issue.

15. It erred in holding that the Board was statutory body and the defendant was not liable for the wrongful -- ~~actual~~ action of the board.

16. The lower Court did not properly understand the law on the point and the rulings quoted have been mis-applied.

17. Pillay was wrongly believed and plaintiff has been wrongly disbelieved.

C. C. C.

18. The Electrical Sub Inspector though present in Court was not examined by the defendant in the case; the lower Court should have drawn an inference adverse to the defendant.

19. Some documents have been wrongly admitted in evidence and some others which are not public documents have been exhibited without their being properly proved.

20. Wrong inferences have been drawn. On the aforesaid grounds amongst others, the appellant respectfully prays that the appeal be allowed and the suit be decreed with costs throughout.

Typed by
A.G. Prabhu

Read by
A.G. Prabhu

Compared by

True Copy

Clerk of the Court

11

11/4 the 93 1911

April 6 The Court 12

Record Keeper.

Copy was delivered 22nd April 1911

Record Keeper

Copy was delivered 25th April 1911

Record Keeper

0.40 R35

ಮಾಲೂರು ತಾಲ್ಲೂಕು ಮಾಸ್ತಿಗ್ರಾಮದ ಲಿಂಗಪ್ಪನ ಮಗ

ಮಾಸ್ತಿ ಲಿಂಗಪ್ಪನವರು ಕೊಟ್ಟಿರುವ ಅರ್ಜಿ.

ಅರ್ಜಿದಾರರು ಕೆಳಗಿನ ಕಾರಣಗಳಿಗಾಗಿ ಈ ಕೆಳಗಿನಂತೆ ಕೋರಿಕೊಳ್ಳುತ್ತಾರೆ.

(೧) ಸರ್ವೆ ನಂಬರ್ ೨೦೦ರಲ್ಲಿ ೩೫ ಗುಂಟೆ ಜಮೀನು ಅರ್ಜಿದಾರರ ಹೆಸರಿಗೆ ಮಂಜೂರು ಮಾಡಿಕೊಡಬೇಕೆಂದು ಕೋರಿಕೆ.

ಅರ್ಜಿದಾರರ ಕೋರಿಕೆಯ ಮೇರೆಗೆ ಸರ್ವೆ ನಂಬರ್ ೨೦೦ರಲ್ಲಿ ೩೫ ಗುಂಟೆ ಜಮೀನನ್ನು ಅರ್ಜಿದಾರರಿಗೆ ಮಂಜೂರು ಮಾಡಿಕೊಡಲಾಗಿದೆ.

(೨) ಸರ್ವೆ ನಂಬರ್ ೨೦೦ರಲ್ಲಿ ೩೫ ಗುಂಟೆ ಜಮೀನು ಅರ್ಜಿದಾರರ ಹೆಸರಿಗೆ ಮಂಜೂರು ಮಾಡಿಕೊಡಲಾಗಿದೆ.

ಅರ್ಜಿದಾರರು ಕೆಳಗಿನ ಕಾರಣಗಳಿಗಾಗಿ ಈ ಕೆಳಗಿನಂತೆ ಕೋರಿಕೊಳ್ಳುತ್ತಾರೆ.

ಅರ್ಜಿದಾರರ ಕೋರಿಕೆಯ ಮೇರೆಗೆ ಸರ್ವೆ ನಂಬರ್ ೨೦೦ರಲ್ಲಿ ೩೫ ಗುಂಟೆ ಜಮೀನನ್ನು ಅರ್ಜಿದಾರರಿಗೆ ಮಂಜೂರು ಮಾಡಿಕೊಡಲಾಗಿದೆ.

ఈ క్రింది విధంగా ఆదాయ వ్యయాలు ప్రతిపాదించడమైనది :-

రాష్ట్ర ప్రభుత్వం ప్రతిపాదించిన ఆదాయ వ్యయాలను ఆమోదించడానికి ఈ సభ ఏర్పాటు చేయబడింది. ఆ ప్రతిపాదనలను ఆమోదించడానికి ముందు ఈ సభ ఆదాయ వ్యయాలను పరిశీలించి తగిన సలహాలు ఇవ్వడానికి

×41C/13-6-46

The appeal filed by the unsuccessful plaintiff in Dharwar Civil Suit No 36 of 1943 has been partially allowed. For the reasons stated in his letter at p. 1 ante the D.G.P recommends a second appeal. The Collector agrees with him. The suit was for a declaration that the Order of the Licensing Board cancelling the electrical contractor's licence and suspending for a year the supervisor's permit held by the plaintiff was illegal, and for recovery of Rs 2330 as damages. The nature of the suit is explained in Mr. Kundeshwar's note at p. 21 of the suit file. The plaintiff's main grievance was that he was not given an opportunity to be heard in his defence before his licence was cancelled. The lower court dismissed the suit entirely. On appeal the district court has granted the declaratory relief holding that the Board acted illegally in not hearing the plaintiff in the order without hearing the plaintiff in his defence. The lower court's decree dismissing the claim for damages was however confirmed. It is against this declaratory decree that the D.G.P recommends a second appeal.

The reasons given by the D.G.P are far from convincing. The weakness of this aspect of the Government's case was recognised in Mr. Kundeshwar's notes at pp. 21 and 27 and in the R.L.A.'s note at p. 28 of the file. The judgment of the appellate court appears to be correct. The suit for damages has been dismissed and there is little advantage in appealing over a point which is doubtful and academic. The Collector may be informed that this is not a fit case for appeal.

Sec/P.W.
13/6/46

Secy. Public Works 14/6/46

D agree. There are no chances of success in the second appeal. Rly 21/6 — R.L.A.

Yes. This is only a fit case.

BALR
R.L.A

Sec/P.W.
Rly 30/6

2-r

957 - 41

Subject: ~~Fixation~~ Filing of appeal to the High Court, against the decision of the Assistant Judge, Dharwar in Civil Suit No. 36/43.

*No.LAW.410 -- Lett-er. Dharwar, 21/5/1946

To

The Remembrancer of Legal Affairs, Bombay.

Ref: Your letter No.3498 dated the 10th May 1946.

In forwarding herewith a report submitted by the Government Pleader, Dharwar requesting to move Government, to prefer an appeal to the High Court in respect of the claim allowed by the Assistant Judge, Dharwar, I am to state that I agree with the Government Pleader's opinion contained therein ~~contained therein~~ and request you to move Government to obtain necessary orders in the matter.

Certified copies of judgment and decree are also sent herewith. Please acknowledge the receipt of the papers.

BB.

District Magistrate, Dharwar.

88
27/5/46

4688
29/5/4 -

Submitted with pp (S-Dur 1/44)

hm
28/5 AS

P. W. D.
File No. LDUOR 4688
Serial No. 22872.

E(68) 17 6.96

1435 79 S.D.W.O.V 4688

Bl. Engr & Gr. Steel Cable
note of this decision
in files

13/6/66

El. Engr (T)
15/6

W.O. to the El. Engr to Sept.
as 18-6-66

with S.D. files no S.D.W.O. 1/44
& no 4042

Below U.O.R.No.L.D.U.O.R.4688/ 22872 dated the 18th June 1946, from Gover-ment in the Public Works Department.

No. EX1/ 1 of 1946.

Bombay, 21st June 1946.

Noted and returned, with compliments.

2. It may be pointed out that in the Hubli Electricity case, Justice Blagden decided that the Local Government is not bound by the principles of natural justice in forming its opinion under section 4(1)(a) of the Indian Electricity Act, which reads as under:-

"The Local Government may, if in its opinion the public interest so requires, revoke a license in any of the following cases, namely:-

(a) where the licensee, in the opinion of the Local Government, makes wilfull and unreasonably prolonged default in doing anything required of him by or under this Act....."

3. The action against Mr.Surjansingh B.Suraj was taken under condition 35A of the Rules and conditions for the grant of Certificates of Competency and Permits to Supervisors and Wiremen and Licenses to Electrical Contractors and other matters connected therewith. This rule reads as under:-

"The Board may at any time cancel a contractor's license if the person(or firm) to whom (or to which) the license is granted is, in the opinion of the Board not fit to hold such license".

4. In view of Justice Blagden's ruling, it is not understood why the Board should be bound by the principles of natural justice, when the necessary powers are given to the Board by Government in this respect.

Electrical Engineer to Govt.

P.

L.D. nor. 4688/23917.

El. Br. cls. P. W. D.

Submitted with refce. to the Orders of Secy. to Govt. on p. 23 ante.

2. The remarks, overleaf, from the El. Engr. to Govt. may be brought to the notice of the R.L.A. and these papers be returned to that officer.

AS3
25-6-46

The arguments advanced by the El. Engr. to Govt have been already taken notice of, vide, para 6 of the judgment. Therefore the R.L.A.'s advice that this is not a fit case for appeal may be accepted.

DS.
Secy. (I)

GH
25 VI 46

5799 /
A/29-6-46

Yes.
26/6/46

Corr. to R.L.A. d. the 28-6-1946 + + with L.D. files Nos S. Dur. 1/4 & No 4042

L. D.
- 8. JUL 1946

P. W. D.
File No L. D. nor 4688.
Serial No. 23917

Submitted with pp.
2 The result of the First Appeal may be recorded

Secy (I) 22-6-46

Sm 29/6 AS

29/6

pl issue ltr

8/7/46

103 165

Suits:
Dharwar.
For a declaration that Rs.2,330 should be awarded as past damages and further future damages should be given. The order of 17th April 1942 by the Licensing Board cancelling Licence No.Hub.C7 and suspending permit No.B.G.426 is illegal, void and inoperative

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 4746
Bombay Castle, 2nd July 1946.

Read Government Resolution, Legal Department, No.4893, dated the 30th June 1945.

Letter from the District Government Pleader, Dharwar to the Collector of Dharwar, No.804, dated the 1st May 1946, stating that Civil Appeal No. 64 of 1945 filed by the plaintiff in the suit noted in the margin was decided by the Assistant Judge, Dharwar, on the 20th March 1946, when the following order was passed:-

In the Court of the First Class Sub-Judge, Dharwar.
Civil Suit No.36 of 1943.
Surajsingh B. Suraj. ... .. Plaintiff;
versus
The Government of Bombay. .. Defendant.
Claim - Rs.2,330.

"Appeal is partially allowed. Decree passed by the Lower Court dismissing the plaintiff's suit for declaration is partially reversed and the following declaration is made". "It is hereby declared that the order dated the 17th April 1942 passed by the Licensing Electric [illegible] Department P.W.D. by cancelling the plaintiff's contractor's licence No; Hub.C.7 and supervisor's permit No.B s 426 for a period of one year is illegal. The decree passed by the Lower Court dismissing the plaintiff's suit for damages is confirmed and the appeal to that extent is dismissed. As the success is divided, there will be no order as to costs of the parties in the Lower Court and appeal".

Letter from the District Government Pleader, Dharwar, No.816, dated the 2nd May 1946, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

Original R. M. Mehta
R. M. MEHTA,
Assistant Secretary to the Government of Bombay, Legal Department.

Issued 23/7

To
The Public Works Department,
The Commissioner, Southern Division,
The Collector of Dharwar.

Ms.1.7. Submitted for signature.
Parts 1-7
A.S. 24/7

Submitted after issue
2 File in S. Dwr 1/44

3/7. AS.
3/7/46